

THE
LAW OF MINES
IN CANADA

BY
WM. DAVID MCPHERSON
AND
JOHN MURRAY CLARK, M.A., LL.B.
*Of Osgoode Hall, Toronto, Canada,
Barristers-at-Law.*

TORONTO:
THE CARSWELL COMPANY, LIMITED
1898

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TO
The Honorable Arthur Sturgis Hardy, Q.C., M.P.P., R.R.D.
ATTORNEY-GENERAL
AND
PREMIER OF THE PROVINCE OF ONTARIO,
WHO, FOR MANY YEARS, AS
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PREFACE

The phrase "Law of Mines" has the sanction of no less an authority than Lord Chancellor Selborne, and now designates a recognized Department of Law. Many of the leading cases are based on fundamental principles common to all systems of jurisprudence. Probably in no other branch of law is the Golden Rule "*Sic utere tuo ut alienum non laedas*," or, as it has been expressed, "*Sic utere tuo ut aliena jura non infringas*," so frequently interpreted and applied.

In every country there are peculiar conditions, local and administrative requirements in regard to the acquisition, development and working of mining properties which necessitate more or less special mining laws.

The laws of England, as far as applicable, were, at various times, introduced into all parts of Canada, except Quebec, but the special mining laws now largely depend upon Dominion and Provincial Statutes, and upon regulations having the force of law; consequently for practical purposes the learned and excellent English treatises on the subject are largely inapplicable in Canada.

It cannot be pretended that the present work supplies a long-felt want, for, but recently has it been realized that Canada, particularly the Provinces of Ontario, Nova Scotia, and British Columbia, and certain portions of the North-West Territories, are marvellously rich in minerals.

Indeed, the rapidly increasing importance of the mining industry in the various Provinces and Territories of Canada, renders some statement of the laws in force therein a matter of convenience amounting almost to necessity.

The evolution of Canadian law, and the administration of justice in Canada, form passages in our history to which Canadians may refer with justifiable pride. The strong and fearless administration of justice by Sir Matthew Begbie in the early days of British Columbia is worthy of the best traditions of British civilization. The luminous judgments of such Canadian jurists as Macaulay, Robinson and Halliburton, will compare favorably with the most erudite productions of the English Bench.

To the student of comparative jurisprudence, there can be offered few fields for investigation, more interesting, instructive and inviting, than the development of the laws of the various parts of Canada; the unique system of law in force in Quebec, "*Le Droit Canadien*," shows the deep impress of English and French legal influences, but there may still be observed the imposing features of the Roman law. While the sources of the British Columbia mining laws are mainly English, several important provisions have been adopted from the Pacific Coast states, formerly governed by Spanish and Mexican law.

The necessities of the case have practically determined the form of this work. Chapter I. deals with the Crown title to lands, mines and minerals, and contains an introductory investigation regarding the laws in force in the Provinces and Territories comprising the Dominion of Canada. Chapter II. is a necessary preliminary discussion of the meaning of certain mining terms. Chapters III. to XIII., inclusive, contain compendious statements of legal principles and rules of more frequent application in mining matters, arranged under such topics as Contracts, Leases, Licenses, Workings, Aliens and Foreign Corporation, Grants, Water, Support, Taxation, Wrongful Abstraction and Criminal Offences, etc.

There are so few decisions of Canadian Courts, construing the various Statutes in regard to mines and minerals, that it would have been rash and unsatisfactory to have attempted any statement of the effect thereof, in words not sanctioned by Parliament or Legislature. A reference to the Statutes demonstrates that it is more

useful to reproduce the text, as has been done in Chapters XIV. to XIX., with such comments and information as the limits of the work permit.

In view of the intricacy of the subjects dealt with, the multiplicity of the decisions—under diverse systems of jurisprudence—commented on, and the complicated character of the legislation, Imperial, Dominion, and Provincial, discussed, it would be idle to hope that error has been avoided, although no pains have been spared to render the work accurate.

By careful indexing and frequent cross references many of the inconveniences incident to the discussion, in one volume, of numerous distinct subjects, have been avoided, and the practical utility of the work thereby increased.

The notes on the Quebec Mining Law were prepared by PROF. F. P. WALTON, B.A. (*Oxon.*) LL.B. (*Edin.*), Professor of Roman Law and Dean of the Faculty of Law, McGill University, Montreal, an advocate of the Scottish Bar and sometime Legal Secretary of the Lord Advocate of Scotland.

The notes on the Mining Laws of the other Provinces were revised as follows:—Ontario, by A. BLUE, Director of the Bureau of Mines; New Brunswick, by HENRY A. POWELL, M.P., of the New Brunswick Bar; Nova Scotia, by E. L. NEWCOMBE, Q.C., of the Nova Scotia Bar, Deputy Minister of Justice of Canada; British Columbia, by AULAY MORRISON, LL.B., M.P., of the British Columbia Bar.

The authors desire to express their thanks to other friends for kind assistance. They are particularly indebted to N. W. HOYLES, M.A., Q.C., the learned Principal of the Law School of Ontario, for friendly criticism and thoughtful suggestions.

The chapter on Taxation was revised by HIS HONOR JUDGE McDougall, and that on Water by R. U. McPHERSON, B.A., LL.B.

J. BURLEY SMITH, M.E., assisted in the preparation of the Glossary, which was revised by G. M. DAWSON, LL.D., C.M.G., Director of the Dominion Geological Survey.

The authors' thanks for valuable suggestions and information furnished, are also due, to HON. CLIFFORD SIFTON, Q.C., M.P., P.C., Minister of the Interior of Canada; HON. J. M. GIBSON, Commissioner of Crown Lands for Ontario; HON. A. TURGEON, Commissioner of Col. and Mines, Quebec; HON. A. T. DUNN, Surveyor-General of New Brunswick; HON. J. W. LONGLEY, Attorney-General of Nova Scotia; HON. C. E. CHURCH, Commissioner of Works and Mines, of Nova Scotia; HON. JAMES BAKER, Minister of Mines, British Columbia; HON. J. D. CAMERON, Attorney-General of Manitoba; C. J. FLEET, B.C.L., of the Montreal Bar; H. McINNES, M.A., of the Nova Scotia Bar; T. P. GALT, B.A., GEORGE C. CAMPBELL, ANGUS MACMURCHY, B.A., and FRED C. JARVIS, of the Ontario Bar.

*Osgoode Hall,
Toronto, Canada,*

30th June, 1898.

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LIST OF ABBREVIATIONS

A. C.	Appeal Cases.
Ad. & E.	Adolphus and Ellis's Reports, K. B.
A. & E.	Adolphus and Ellis, Queen's Bench Reports, New Series.
All.	Allen, New Brunswick.
A. R.	Ontario Appeal Reports.
A. L. T.	Australian Law Times.
Allen (N.B.)	Allen's New Brunswick Reports.
App. Cas.	Appeal Cases, English House of Lords and Privy Council.
Am. Rep.	American Reports.
Appd.	Appendix.
Atk	Atkyn's Reports, Chancery.
Anstr	Anstruther's Reports, Exch.
B.	Beavan's Reports.
B. & A.	Barnewall and Alderson's Reports, K. B.
B. & Ad.	Barnewall and Adolphus's Reports, K. B.
B. & C.	Barnewall and Cresswell's Reports, K. B.
Bac. Abr.	Bacon's Abridgment.
B. & S.	Best and Smith's Reports, Q. B.
B. C.	British Columbia.
B. C. R.	British Columbia Reports.
Beav.	Beavan's Reports, Rolls Court.
Bing. N. C.	Bingham's New Cases, C. P.
Bli. O. S.	Bligh's Reports, Old Series.
Bro. C. C.	Brown's Chancery Cases.
Bro. Ch. Rep.	Brown's Chancery Reports.
Burr.	Burrow's Reports, K. B.
Can.	Canada.
Ch. A.	Chancery Appeals.
C. B.	Common Bench Reports, or Manning, Granger and Scott's Reports.
C. B. N. S.	Common Bench Reports, New Series.
C. C. R.	Crown Cases Reserved.
Can. L. J.	Canada Law Journal.
Can. L. T.	Canada Law Times.
C. M. R.	Crompton, Meeson and Roscoe.
C. P.	Law Reports, Common Pleas.
C. P. D.	Law Reports, Common Pleas Division.
Campb.	Campbell.

Cassel's Dig.	Cassel's Digest.
Ch.	Chancery.
Ch. D.	Law Reports, Chancery Division.
Ch. Rep.	Reports in Chancery (Ch. R.).
C. & F.	Clark and Finnelly.
C. & P.	Carrington and Payne.
Cochr.	Cochrane's Nova Scotia Reports.
Co. (Rep.)	Coke's Reports.
Cowp.	Cowper's Reports, K. B.
Cox. C. C.	Cox's Criminal Cases.
Craw. & Dix Ab. C.	Crawford and Dix's Abridged Cases, Ireland.
Cr. & J.	Crompton and Jarvis, Reports, Ex.
Cr. Cas. R.	Crown Cases Reserved.
Crompt. & M.	Crompton and Meeson's Reports, Ex.
Cró. Eliz.	Croke (Eliz., Jam., Cha.), K. B. & C. P.
De G. F. & J.	De Gex, Fisher, and Jones's Reports, Chancery.
De G. & J.	De Gex and Jones's Reports, Chancery.
De G. M. & G.	De Gex, McNaughton, and Gordon's Reports, Chancery.
De G. & Sm.	De Gex and Smale's Reports, Chancery.
Drew.	Drewry.
Dick.	Dicken's Reports, Chancery.
Doug.	Douglas's Reports, K. B.
Drew.	Drewry's Reports, Chancery.
Drew. & Sm.	Drewry's and Smale's Reports, Chancery.
East	East's Reports, K. B.
El. B. & E.	Ellis, Blackburn, and Ellis's Reports, Q. B.
E. & A. U. C. R. ..	Error and Appeal Reports, Upper Canada or Ontario.
E. B. (El. & Bl.) ..	Ellis and Blackburn, Reports, Q. B.
E. & E.	Ellis and Ellis.
E. & I. I.	English and Irish Appeals, Law Reports.
Eq. (Rep.)	Equity Reports.
Ex.	Exchequer.
Ex. D.	Exchequer Division.
Exch. Rep.	Welsby, Hurlstone, and Gordon's Reports, Ex.
Exch. C. R.	Exchequer Court Reports.
Fou.	Fountainhall's Decisions, Court of Sessions.
Freem.	Freeman's Reports, K. B.
Giff.	Giffard's Reports, Chancery.
Gr.	Grant's Chancery Reports (Ontario).
H. & C.	Hurlstone and Coltman's Reports, Ex.
H. & N.	Hurlstone and Norman's Reports, Ex.
H. & M.	Hening and Mumford, Virginia Court of Appeals.
Ha.	Hare's Reports (Chancery).
Han.	Hannay's New Brunswick Reports.
H. L. C.	House of Lords Cases.
H. L. Sc.	House of Lords, Scotch Appeals.
Hun. N. Y.	Hunter's New York Reports.
Inst.	Coke's Institutes.
Ir. Rep. Eq.	Irish Reports, Equity Series.
Ir. C. L.	Irish Reports, Common Law Series.
Ir. L. R.	Irish Law Reports.

Ir. Ch. Rep.	Irish Chancery Reports.
Ir. R. Exch.	Irish Reports, Exchequer.
Jac. & W.	Jacob and Walker's Reports, Chancery.
J. & H.	Johnson and Hemming's Reports, Chancery.
J. & L.	Jones and Latouche's Reports, Chancery, Ireland.
James	James, Nova Scotia Reports.
Johns.	Johnson's New York Supreme Court and Court of Errors
Jur. N. S.	Jurist, New Series.
Kay	Kay's Reports, Chancery.
K. & J.	Kay and Johnston's Reports, Chancery.
L. C. L. J.	Lower Canada Law Journal.
L. J. Ch.	Law Journal, Chancery.
L. J. M. C.	Law Journal, Magistrate's Cases.
L. J. N. S.	Law Journal, New Series.
L. J. N. S. Ch.	Law Journal, New Series, Chancery.
L. J. Q. B.	Law Journal, Queen's Bench.
L. J. P. C.	Law Journal, Privy Council.
L. R.	Law Reports.
L. R. (Ch.)	Law Reports, Chancery Appeals.
L. R. Ir.	Law Reports, Irish.
L. T.	Law Times.
L. T. N. S.	Law Times, New Series.
L. T. M. C.	Law Times, Magistrate's Cases.
Lev.	Leving's Reports, K. B.
M. & S.	Maule and Selwyn's Reports, K. B.
M. & W.	Meeson and Welsby's Reports, Ex.
Mac.	Sir J. Mackenzie's Institutes of the Law of Scotland.
Mac.	Macassey's Reports (N. Z.).
Macq.	Macqueen's Scotch Appeal Case.
Madd.	Maddock's Reports, Chancery.
Mason	Mason, United States Circuit Court, First Circuit.
Mer.	Merivale's Reports, Chancery.
M. & R.	Manning and Ryland's Reports, K. B.
M. & Rob.	Moody and Robinson.
Mont. & Ma.	Montagu and Macarthur.
Moo. P. C. C.	Moore's Privy Council Cases.
Myl. & Cr.	Mylne and Craig's Reports, Chancery.
Myl. & K.	Mylne and Keene's Reports.
N. B.	New Brunswick.
N. B. R.	New Brunswick Reports.
N. R.	New Reports, by Bosanquet and Puller, C. P.
N. S.	Nova Scotia.
N. S. D.	Nova Scotia Decisions.
N. S. R.	Nova Scotia Reports.
N. S. R. E. D.	Nova Scotia, Ritchie's Equity Decisions, by Russell.
N. S. W. L. R.	New South Wales, Law Reports.
N. S. W. S. C. R.	New South Wales, Supreme Court Reports.
N. S. W. W. N.	New South Wales, Weekly Notes.

N. W. T.	North-West Territories.
N. Z. C. A.	New Zealand Court of Appeal.
N. Z. Digest	New Zealand Digest.
N. Z. L. R.	New Zealand Law Reports.
N. Z. L. R. S. C. .	New Zealand Law Reports, Supreme Court.
N. & M.	Neville and Manning's Reports, K. B.
Old.	Oldright's Nova Scotia Reports.
Ont.	Ontario.
O. R.	Ontario Reports.
O. S.	Old Series, Upper Canada (Ontario) Reports.
O. Pr. R.	Ontario Practice Reports.
Pa.	Pennsylvania Supreme Court.
Pac.	Pacific Reporter.
Peters	Peter's United States Supreme Court.
P. C.	Privy Council.
P. D.	Probate Division.
Ph.	Phillip's Law Reports, Chancery.
Plowd.	Plowden's Com. or Reports, K. B.
P. R.	Practice Reports.
P. W.	Pere William's Reports, Chancery.
Pug.	Pugsley's New Brunswick Reports.
Pug. & Bur.	Pugsley and Burbidge's New Brunswick Reports.
Q.	Quebec.
Q. B. D.	Queen's Bench Division (The Law Reports).
Q. R.	Quebec Reports.
Q. L. R.	Quebec Law Reports.
R.	Coke's Reports.
R. C.	Railway Cases.
R. E. D.	Ritchie's Equity Decisions, by Russell.
R. L.	Revue Legale (Quebec).
R. J. Q.	Rapports Judiciaires de Quebec.
R. R.	Revised Reports.
Rep. temp. Finch ...	Finch's Reports, Chancery.
R. & C.	Russell and Chesley's Nova Scotia Reports.
R. & G.	Russell and Geldert " "
Russ.	Russell's Reports, Chancery.
Russ. & Myl.	Russell and Mylne's Reports, Chancery.
S. C.	Same Case.
S. C. App.	Scotch Appeals, Law Reports.
S. C. L. R.	Scotch Appeals, Law Reports.
S. C. R.	Supreme Court Reports.
Scott	Scott's Reports, C. P.
Salk.	Salkeld's Reports, K. B.
Saund.	Saunders's Reports, K. B.
Sch. & L.	Schoale and Lefroy's Reports, Chancery, Ireland.
Shaw App.	Shaw's Reports of Appeal Cases, House of Lords.
Sim. & St.	Simon's and Stuart's Reports, Chancery.

Sim.	Simons's Reports, Chancery.
Sim. & Stu.	Simons and Stuart's English Vice-Chancery Reports.
Sm. L. C.	Smith's Leading Cases.
Stra.	Strange's Reports, K. B.
Swanst.	Swanston's Reports, Chancery.
T. R.	Term Reports (Durnford and East), K. B.
Taunt.	Taunton's Reports, C. P.
Thom.	Thomson's Nova Scotia Reports.
T. L. R.	Times Law Reports.
T. & C.	Thompson and Cook, New York Supreme Court.
T. & R.	Turner and Russell's Reports, Chancery.
Tyrw.	Tyrwhitt's Reports, Exchequer.
U. C. C. P.	Common Pleas Reports, Upper Canada (Ontario).
U. C. Q. B.	Queen's Bench Reports, Upper Canada (Ontario).
U. C. R.	Upper Canada (Ontario) Reports, Queen's Bench.
U. S.	United States.
Vaugh.	Vaughan's Reports, C. P.
Ves.	Vesey's Sen., Reports, Chancery.
Vern.	Vernon's Reports, Chancery.
V. L. R.	Victoria Law Reports.
W. R.	Weekly Reporter.
Wils.	Wilson's Reports, K. B.
W. N.	Weekly Notes, England.
W. Va.	West Virginia Supreme Court of Appeals.
W. W. & A'b.	Wyatt, Webb and A. Beckett's Reports (Australia).
Y. & C.	Younge and Collyer's Exch.
Y. & C. Ch.	Younge and Collyer's Chancery Cases.

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THE
LAW OF MINES
IN CANADA

THE LAW OF MINES IN CANADA.

CHAPTER I.

THE CROWN TITLE; LAWS IN FORCE, ETC.

Canada is the creation of "The British North America Act, 1867,"¹ which came into force, by proclamation, on the first day of July, 1867, and federally united the former provinces of Canada, Nova Scotia and New Brunswick, into one Dominion under the name Canada.

Canada then comprised only the present Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, into which it was divided by the Act; but provision was made for the admission into the Union, of Newfoundland, Prince Edward Island, British Columbia, Rupert's Land, and the North-West Territories.

Subsequently, Rupert's Land² and the North-West Territories³ were acquired; the Crown colonies of British Columbia⁴ and Prince Edward Island⁵ were admitted; and all the other British territories and possessions in North America, with the Islands adjacent thereto, except Newfoundland and its dependencies, were annexed⁶ to Canada by Great Britain, so that, at the present time, Canada comprises the whole of the northern half of North America, except Alaska,⁷ and that portion of Labrador⁸ which forms a dependency of Newfoundland. It is bounded⁹ on the north by the Arctic Ocean, on the east by the Atlantic Ocean and Labrador, on the south

¹ 30-31 Vt. (Imp.) c. 3.

² 23rd June, 1870.

³ 23rd June, 1870.

⁴ 20th July, 1871.

⁵ 1st July, 1873.

⁶ By Imperial Order in Council, dated 31st July, 1880, to take effect

on 1st September, 1880; see Stats. of Can. 1880-1, p. x.

⁷ For boundaries, see App. I.

⁸ For boundaries, see App. I.

⁹ For data as to boundaries, see App. I.

by the United States of America, and on the west by the Pacific Ocean and Alaska, and contains an estimated area of about 3,574,980 square miles, of which about 3,434,244 are land surface and 140,736 water surface.

It is about 3,500 miles from east to west, and about 1,400 miles from north to south, and comprises about 40 per cent. of the British Empire of which it is part.

"The British North America Act, 1867,"⁹ enacted that, except as otherwise therein provided, all laws in force in Canada, Nova Scotia or New Brunswick at the Union, and all Courts, etc., existing therein at the Union, should continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as were enacted by or existed under Acts of Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament, or of that Legislature under the Act.

Similar provisions were made as to the other Provinces and Territories now forming part of Canada.

The B. N. A. Act, 1867, further provided for the distribution of legislative powers between the Parliament of Canada and the Provincial Legislatures.

The jurisdiction of the Legislative Assembly of the North-West Territories is defined by the Dominion Act of 1891.¹⁰

The parts of the Province of Canada as it existed at the passing of the B. N. A. Act, which formerly constituted respectively the Provinces of Upper Canada and Lower Canada were severed,¹ and formed into two separate Provinces. The part which formerly constituted the Province of Upper Canada is now the Province of Ontario; and that part which formerly constituted the Province of Lower Canada is now the Province of Quebec.

Subsequently, and after the settlement of the "Boundary Dispute" between Ontario, the Dominion and Manitoba, the westerly, northerly and easterly boundaries of Ontario² were defined by Imperial Act.³

⁹ *Supra*.

¹⁰ 54-55 Vict. (D.) c. 22, s. 6; assented to 30th September, 1891.

¹ B. N. A. Act, 1867, s. 6.

² For boundaries, see Appendix I.

³ 52-53 Vict. (Imp.) c. 28.

Ontario and Quebec. By the Treaty of Paris, concluded on the 10th day of February, 1763, the French possessions in North America were ceded to Great Britain.

The legal and constitutional effect of the conquest of Quebec and of this cession of Canada, was to vest the soil and ownership of the public land in the Crown, and to subject the same to the Royal Prerogative.⁴

On the 7th October, 1763, a Royal Proclamation was issued introducing the law of England, both Civil and Criminal, into the whole of the ceded territory, which included what was then known as the Province of Quebec, "with liberty to all persons who may think themselves aggrieved by the sentence of such Courts in all civil cases to appeal, with the usual limitations and restrictions to us in our Privy Council."

In 1774 the Quebec Act⁴⁴ was passed, by section IV. of which the Ordinances made by the Governor in Council of Quebec for the time being, relative to civil government and administration of justice in the said Province, and all commissions to Judges and other officers thereof, were "revoked, annulled, and made void, from and after the first day of May, one thousand seven hundred and seventy-five," and by section VIII. of which, French law, until "varied or altered by any Ordinance that might from time to time be passed in the said Province by the Governor," etc., "for the time being," by and with the advice and consent of the "Legislative Council of the same, to be appointed," as thereafter set forth in the Act, was re-introduced "in all matters of controversy relative to property and civil rights."

The limits of the Province of Quebec were enlarged so as to include the whole of the territory afterwards formed into Upper Canada, and section 3 provided that nothing therein should "make void, or vary, or alter any right, title, or possession, derived under any grant, conveyance, or otherwise howsoever, of or to any lands within the said Province (of Quebec) or the Provinces thereto adjoining, but that the same should remain and be in force, and have effect, as if the Act had never been made."

The French law, including the Custom of Paris, the Royal edicts, and those of the Colonial Intendants, under the French regime, as modified by Provincial Statutes, or by the introduction of certain

⁴ Per Boyd, C., in *Regina v. St. Catharines Milling Co.*, (1885) 10 O. R. 204.

⁴⁴ 14 Geo. III. (1774) c. 83.

portions of English law, remained in force in Lower Canada until the "Civil Code of Lower Canada," framed upon the same general plan as the code Napoleon, by commissioners appointed pursuant to C. S. L. C. c. 2, came into force on the 1st August, 1866.⁵

The Imperial Act of 1791,⁶ repealed the power of the Governor in Council to legislate, divided the former Province of Quebec into the two Provinces of Upper Canada (now Ontario) and Lower Canada (now Quebec); granted to each a separate constitution and representative form of government; provided that all lands to be granted in Upper Canada should be in free and common socage, but left the former French Canadian law and Ordinances of the Governor in Council in force in Upper Canada.

The first Parliament of Upper Canada met at Newark, now Niagara, on the 17th September, 1792, and ⁷ repealed the provision in 14 Geo. III. c. 83, "That in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same," and enacted ⁸ "that from and after the passing of this Act ⁹ in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England (as they stood on the 15th day of October, 1792) as the rule for the decision of the same." And the same with regard to evidence, legal proof and investigation of matters of fact. The English Poor and Bankrupt laws were expressly excepted.

Provision was also made (section 4) whereby the Ordinances theretofore made by the Governor in Council of the Province of Quebec, previous to the division thereof, were to remain in force "otherwise than as they are necessarily varied by the provisions herein mentioned," and all "ecclesiastical rights and dues," and "forms of proceedings in civil actions," and the "jurisdiction of the Courts already established" were left intact.

To the above must be added the important exception, not expressed by the Legislature, but implied by the Courts, of such English laws as are clearly not applicable to the state of things existing in the Province.¹⁰

⁵ See 29 Vict. (Canada) c. 41, and Governor-General Monck's Proclamation of 26th May, 1866; *Regina v. DeLery*, (1883) 6 Legal News, 402; *Fisheries Case*, (1896) 26 S. C. R. p. 444; an appeal from this judgment has been argued before the Privy Council and is standing for judgment.

⁶ 31 Geo. III. (1791) c. 31, commonly called "The Constitutional Act."

⁷ 31 Geo. III. (1791) c. 31.

⁸ Section III.

⁹ 15th October, 1792.

¹⁰ See *Regina v. Roblin*, (1862) 21 U. C. R. 352, per Robinson, C.J., page 355.

In *Doe dem. Anderson v. Todd*,¹ the judgment of the Court was that the Statutes of Mortmain¹¹ were in force in Upper Canada. Chief Justice Robinson, in giving judgment, said, " . . . no one may consent to admit that there exists in any tribunal an arbitrary discretion to say what British Statutes shall be in force here, and what not. . . . To repeat what I have already quoted from Mr. Justice Blackstone, what shall be admitted and what rejected, at what times, and under what restrictions, must, in case of dispute, be decided in the first instance by the Provincial judicature, subject to the revision and control of the King and Council; and, we may add, subject also to any express provision which the Legislature of the Mother Country or the Province may think fit to make."

In *Regina v. Roblin*,² Robinson, C.J., referring to the English Act 26 Geo. II. c. 35, stated:³ " . . . that part of it . . . has been repealed in England; . . . but that

¹ (1846) 2 U. C. R. 82.

¹¹ The statute in question in this case was 9 Geo. II. c. 36, relating to Charitable Uses, referred to in Chitty on Statutes (5th ed), vol. i. *sub nomine* "Charities" as "commonly, but erroneously, called the 'Mortmain Act.'" The following statutes may be referred to as Statutes of Mortmain: 9 Hen. III. c. 36 (To restrain alienations in Mortmain); 7 Edw. I. St. 2 (*De religiosis*, to restrain alienations in Mortmain); 34 Edw. I. St. 3 (License in Mortmain); 7 & 8 Wm. III. c. 37, (Crown enabled to grant licenses in Mortmain). Alienation in *mortmain*, in *mortua manu*, is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal; 7 Edw. I. St. 2, c. 1, provides that no person, religious or other, whatsoever he be, that will buy and sell any lands or tenements . . . or that will receive by reason of any other title, whatsoever it be, lands or tenements, or by any other craft or engine, will presume to approximate to

himself under pain of forfeiture of the same, whereby such lands or tenements may anywise come into mortmain, and that if any such person, religious or other, offend against this statute, it shall be lawful for the King and other chief lords of the fee intermediate to enter into the land so aliened . . . and to hold it in fee as an inheritance. The right of the Crown to grant licenses to take and alien in mortmain, notwithstanding this statute, was recognized from an early period, and was confirmed by Stat. 7 & 8 Wm. III. c. 37, which enacts that it shall and may be lawful for the King, his heirs and successors, when he or they shall think fit, to grant to any person or persons, bodies politic or corporate, license to alien in mortmain; and also to purchase, acquire, take and hold in mortmain in perpetuity or otherwise, any lands, etc.

See also *McDiarmid v. Hughes*, (1886) 16 O. R. 570.

² *Supra*.

³ At page 354.

repealing Act has no force in Canada; being passed since our constitution was given to us." " . . . It is clear that . . . had not in itself any binding force in this country, not merely because some of its provisions are in the nature of things inapplicable to us, and incapable of being carried out, for that might not prevent other parts of the same Act from being in force to which there might be no such objection, but because," etc., and ⁴ "The Statute 26 Geo. II. c. 35, being in force in England when our Statute 32 Geo. III. c. 1, was passed, was adopted as well as other statutes, so far as it consisted with our civil institutions, being part of the law of England at that time relating to civil rights."⁵

These decisions establish, 1st. That the subsequent repeal in England of an English Statute in force in Canada (i.e. the late Province of Canada) on the 15th October, 1792, does not operate to repeal the Act in Canada.

2nd. That an English Statute generally may be in force in Canada, though some provisions thereof, not being applicable to Canada, may not be in force in Canada.

In *Hodgins v. McNeil*,⁶ Esten, V.-C., said:⁷ "I think the Stat. 5 & 6 Wm. IV. c. 54 (repealing 11 Geo. II. c. 36), does not extend to this Province. . . . My reasons are that the colonies are not mentioned in the Act; not included by any necessary or even strong intendment; that the Act is one of convenience and policy; that the law of England was not introduced into this Province by the Imperial Legislature, but adopted by our own; that we have a local legislature competent to deal adequately with such matters; that the inconvenience intended to be remedied is . . . practically unfelt here," etc.

It was pointed out by Strong, C.J., in the *Fisheries Case*,⁸ that the doctrine of *Dixon v. Snetsinger*,⁹ which decided that the common law of England did not apply to the non-tidal navigable rivers of Canada, and that such navigable waters remain subject to the rule of the civil rule, is applicable not only to lakes and rivers in the present Provinces of Ontario and Quebec, but also to the Provinces of Nova Scotia, New Brunswick and Prince Edward Island as well, as all these were originally territories ceded by France

⁴ At page 355.

⁵ See also *Dunne v. O'Reilly*, (1861) 11 U. C. C. P. 404, per Draper, C.J., p. 406; and *Hodgins v. McNeill*, (1862) 9 Grant, 305.

⁶ *Supra*.

⁷ P. 309.

⁸ (1896) 26 S. C. R. 444.

⁹ (1872) 23 U. C. C. P. 235, at pp. 244 et seq., which was much discussed in the *Fisheries Case*, 26 S. C. R. 444.

to Great Britain. And the learned Chief Justice observes: "Further, it might, also, apply to Manitoba and the North-West so far, at least, as those portions of the territory of the Dominion were acquired to the British Crown under the 10th Article of the Treaty of Utrecht." With regard to the Province of British Columbia, the principle of the decision in *Dixon v. Snetsinger*⁹ can have no application.

The Imperial Stat. 14 Geo. III. c. 83, s. 18,¹⁰ enacts, "Provided always, that nothing in this Act contained shall extend, or be construed to extend, to repeal and make void, within the said Province of Quebec any Act or Acts of the Parliament of Great Britain, heretofore made for prohibiting, restraining or regulating the trade or commerce of His Majesty's colonies and plantations in America; but that all and every of the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said colonies and plantations, shall be and are hereby declared to be, in force within the said Province of Quebec, and every part thereof."

On the above reasoning it would probably be held that the Acts 1 Wm. & M. c. 30, and 5 Wm. & M. c. 6,¹ relaxing in favor of the subject the Royal Prerogative in respect of Royal Mines are in force in Canada and all the Provinces except Quebec.

By "The Union Act, 1840,"² the Provinces of Upper and Lower Canada were re-united into the late Province of Canada; all laws, etc., in each of the former portions of the Province, were continued until repealed or varied, and the Provincial right of legislation rested on that Act until the formation of the Dominion of Canada in 1867.

The effect of this Act upon the title to Crown Lands is stated by Lord Watson³ as follows: "By an Imperial Statute, passed in the year 1840 (3 & 4 Vict. c. 35), the Provinces of Ontario and Quebec, then known as Upper and Lower Canada, were united under the name of the Province of Canada, and it was, *inter alia*, enacted that, in consideration of certain annual payments which Her Majesty had agreed to accept by way of Civil list, the produce of all territorial and other revenues at the disposal of the Crown arising in either of the United Provinces should be paid into the consolidated fund of the new Province. There was no transfer to the Province of any legal estate in the Crown Lands, which continued to be vested in the Sovereign; but all moneys realized by sales, or in any other manner, became the interest of the Province. In other words, all beneficial

⁹ *Supra*.

¹⁰ 10 Assented to 1774.

¹ These statutes are discussed in *A.-G. v. Morgan*, (1891) 1 Ch. 432.

² Imperial Act, 3 & 4 Vict. c. 35.

³ In *St. Catharines M. & L. Co. v. The Queen*, (1888) 14 Ap. Cas. 46, at p. 55.

interest in such lands within the provincial boundaries belonging to the Queen, and either producing or capable of producing revenue, passed to the Province, the title still remaining in the Crown. That continued to be the right of the Province until the passing of the British North America Act, 1867."

Nova Scotia and New Brunswick. Nova Scotia was ceded by France to England in 1713 by the Treaty of Utrecht, but the Preamble to the Nova Scotia Statute 33 Geo. II. (1759) c. 3, contained the emphatic declaration, "That this Province of Nova Scotia, or Acadia, and the property thereof, did always of right belong to the Crown of England both by priority of discovery and ancient possession."

At that time Nova Scotia included the present Province of Nova Scotia ⁴—except Cape Breton, which was ceded to Great Britain by the Treaty of Paris in 1763, and also, until 1784, the present Province of New Brunswick,⁵ and a portion of the State of Maine, afterwards acquired by the United States under the Ashburton Treaty of 1842.⁶

Prince Edward Island was also ceded to Great Britain in 1763, and annexed to Nova Scotia, but became a separate Province in 1769.

By the B. N. A. Act, 1867, New Brunswick and Nova Scotia, which then included Cape Breton, became Provinces of the Dominion of Canada, with "the same limits as at the passing of the Act."⁷

Nova Scotia, New Brunswick, and Prince Edward Island, which was afterwards admitted into the Canadian Confederation, are popularly known as the Maritime Provinces.

The Courts of Nova Scotia and New Brunswick assumed the law of England to be in force in those Provinces upon common law principles.

The Nova Scotia decisions as to what Imperial Statutes are in force there are collected in Congdon's *Nova Scotia Digest*, at pp. 1336, et seq.

The leading case is *Uniacke v. Dickson*,⁸ where Lord Mansfield's statement "The Colonies take all the common and statute law of England applicable to their situation and condition," was followed by the Supreme Court of Nova Scotia, presided over by Halliburton, C.J.

⁴ For boundaries, see App. I.

⁵ For boundaries, see App. I.

⁶ Hertslet's *Treaties*, vol. 6, p. 861.

⁷ Section 7.

⁸ (1848) James, 287.

The New Brunswick decisions on the subject are collected in Stevens' Digest of New Brunswick Reports, 3rd ed. (1897), p. 139.

In the Fisheries Case,⁹ Strong, C.J.,¹⁰ states that the doctrine of Dixon v. Snetsinger¹ would seem also to apply to the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, "as all these were originally territories ceded by France to Great Britain," and ²Girouard, J., says: "These principles, i.e., those of the old French law followed in La Nouvelle France, applied not only to the Province of Quebec, but to the whole country known as Canada, or La Nouvelle France, including Upper Canada; they also applied to Acadia, Cape Breton and Prince Edward Island and part of New Brunswick of to-day, when these colonies were in possession of the French."

British Columbia. British Columbia, formerly³ called New Caledonia, which, not including Vancouver Island, became a self-governing colony in 1858, was united with the colony of Vancouver Island by proclamation, dated 6th August, 1866, issued pursuant to Imperial Act⁴ cited as "The British Columbia Act, 1866,"⁵ and thereafter, on the 20th day of July, 1871, entered the Dominion as a Province thereof by order⁶ of the Queen in Council, dated the 16th of May, 1871, made pursuant to addresses of the Houses of Parliament of Canada and the Legislative Council of British Columbia therein referred to and set forth. The boundaries of British Columbia, as a colony, were originally fixed by Imperial Act,⁷ which was repealed by 29 & 30 Vict. c. 67, by ss. 7 and 8 of which the present boundaries have been fixed.⁸

By the "English Law Act"⁹ it is provided¹⁰ that the Civil Laws of England, as the same existed on the 19th day of November, 1858, and so far as the same are not from local circumstances inapplicable, should be in force in all parts of British Columbia; provided, however, that the said laws should be held to be modified and altered by all legislation, still having the force of law of the Pro-

⁹ (1896) 26 S. C. R. 444.

¹⁰ P. 530.

¹ (1872) 23 U. C. C. P. 235.

² At p. 551.

³ Until 2nd August, 1858, when 21 & 22 Vict. c. 99, was enacted.

⁴ 29 & 30 Vict. c. 67.

⁵ Assented to 6th August, 1866.

⁶ See Statutes of Canada, 1872, page xxxiv.

⁷ 26, 27 Vict. c. 83, c. 67, 8, 9.

⁸ See Appendix I.

⁹ R. S. B. C. (1897) c. 115.

¹⁰ Section 2.

vince of British Columbia, or of any former colony comprised within the geographical limits thereof.¹

The provisions of section 109 of the B. N. A. Act, 1867, apply to the Provinces therein named, and also to British Columbia, but not to Manitoba or any of the North-west Territories.

The North-West Territories.¹¹ By the Imperial Act,¹² cited as "The Rupert's Land Act, 1865," authority was given to Her Majesty to accept a surrender of all or any of the land, territories, etc., granted, or purported to be granted, by letters patent, by Chas. II. in 1670, to "The Governor and Company of Adventurers trading into Hudson's Bay," known as the Hudson Bay Co., within Rupert's Land, and within one month thereafter by Order in Council to admit Rupert's Land into Canada from a date to be therein mentioned.

The surrender, pursuant to this Act, was recited by Order in Council of 23rd June, 1870, which declared the admission to the Dominion of Rupert's Land and the North-western Territory from and after 15th July, 1870.

By section 10 of said Order in Council it is provided that "all titles to lands up to 8th day of March, 1869, conferred by the Hudson's Bay Co. are to be confirmed."

The Province of Manitoba¹³ was formed out of Rupert's Land and the North-western Territory by the Dominion Act 33 Vict. (1870), c. III., which was confirmed by the B. N. A. Act, 1871.²

"The North-West Territories Act"³ provides that, unless the context otherwise requires:

(a) The expression "Territories" means the North-west Territories, as defined in the Act.

Sec. 3. The Territories, formerly known as "Rupert's Land" and the North-west Territory, shall, with the exception of such portions thereof as form the Province of Manitoba and the District of Keewatin,³³ continue to be called and known as the North-West Territories.⁴

¹ See also "An Act to remove doubts as to the validity of Colonial Laws, cited as 'The Colonial Laws Validity Act, 1865,'" Imperial Statute 28 & 29 Vict. c. 63 (assented to 29th June, 1865). (Appendix to B. C. Stat. 1871, p. 122.) Houston's Constitutional Documents, p. 241.

¹¹ For boundaries, see Appendix I.

¹² 31 & 32 Vict. c. 105 (assented to 31st July, 1868).

¹³ For boundaries, see Appendix I.

² Imperial Stat. 34 Vict. c. 28.

³ R. S. C. 1886, c. 50, s. 2, s.-s. a.

³³ For boundaries, see Appendix I.

⁴ 43 Vict. c. 25, s. 1, part.

Sec. 11. Subject to the provisions of this Act, the laws of England relating to civil and criminal matters, as the same existed on the 15th of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or are not hereafter repealed, altered, varied, modified or affected by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant-Governor in Council.⁵

Sec. 12. All laws and ordinances in force in the Territories, and not repealed by or inconsistent with this Act, shall remain in force until it is otherwise ordered by the Parliament of Canada, by the Governor in Council, or by the Lieutenant-Governor in Council, under the authority of this Act.⁶

The Stickeen Territories ⁷ (now part of the Yukon District). By order dated 31st July, 1880,⁸ of Her Majesty in Council, it was provided that "From and after the first day of September, 1880, all British territories and possessions⁹ in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions shall (with the exception of the Colony of Newfoundland and its dependencies)¹⁰ become and be annexed to and form part of the said Dominion of Canada; and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto."

Prior to the 19th July, 1862, the Stickeen Territories were administered by the Home Government as British possessions abroad. From that time till the 1st day of September, 1880, the Governor for the time being of British Columbia, or in his absence the officer

⁵ 49 Vict. c. 15, s. 3.

⁶ 43 Vict. c. 25, s. 8.

⁷ For boundaries of the territory, formerly so-called, see App. I.

⁸ See Statutes of Canada, 1880-81, p. 9.

⁹ In *Coltman v. Brown*, (1858) 16 U. C. R. 133, Robinson, C.J., said, p. 134. The word "*possessions*" is an expression more generally used in Acts of Parliament when the plain and expressed intention is to confine it to British possessions abroad, that is, out of the United

Kingdom; but where that is the case, the word "abroad" is usually added * * * the term "possessions of Her Majesty" will without any stretch of construction, include England * * *."

¹⁰ For boundaries of that part of Labrador called a Dependency of Newfoundland, see Appendix I., Imperial Letters Patent, dated 28th March, 1876, Consolidated Statutes of Newfoundland, 2nd series, 1892, p. 1107.

administering the government of British Columbia as Administrator of the Government of the said Territories, had power,¹ *inter alia*, "from time to time to make, alter and repeal regulations respecting the use and occupation of lands belonging to Her Majesty within the said territories, and by such regulations to authorize persons to seek or take away gold, silver or other minerals in or from any part of the said territories," etc.

By the said Order in Council it was provided that the law in force in the said territories "shall be the law of England as it existed on the 1st day of January, 1862, so far as the same is applicable to the circumstances of those territories." Since the 1st day of September, 1880, the laws in force in the Dominion of Canada, so far as applicable thereto, have been in force in the said territories; which, by Order in Council of the Governor-General in Council, dated 2nd October, 1895, are now included in and form part of the District of Yukon.²

Crown Title. Section 109 of the B. N. A. Act enacts that "All lands, mines, mineral and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same."

This section applies not only to the Provinces therein mentioned, but also to the Province of British Columbia,³ but does not apply to Manitoba, the Territories or the District of Keewatin.

The previous section⁴ provided that "the public works and property of each Province enumerated in the third schedule⁵ shall be the property of Canada," and section 117 provided that "the several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country."

Section 92 provides that in each Province the Legislature may make laws in relation to

¹ By Order-in-Council of 19th July, 1862.

² See Appendix I. for boundaries of Yukon District.

³ Precious Metals Case, (1889) 14

Ap. Cas. 304, and s. 10 of the Articles of Union, Statutes of Canada, 1872, p. lxxxviii.

⁴ 108.

⁵ See Appendix I.

"The management and sale of the public lands belonging to the Province and of the timber and wood thereon.⁹

Property and civil rights in the Province."⁷

In the *St. Catharines Milling and Lumber Co. v. The Queen*,⁸ it was held by the Privy Council, following *A.-G., Ont., v. Mercer*,⁹ that section 109 of the B. N. A. Act, 1867, gives to each Province the entire beneficial interest of the Crown in all lands within its boundaries which at the time of the union were vested in the Crown, subject to such rights as the Dominion of Canada had under sections 108 and 117, and also that by force of the proclamation (of 1763) the tenure of the Indians was a personal and usufructuary right depending upon the good-will of the Crown; that the lands were thereby and at the time of the union vested in the Crown, subject to the Indian title, which was an interest "other than that of the Province in the same" within the meaning of section 109, and also that by force of the surrender by the Indians the entire beneficial interest in the lands, subject to their privileges, was transmitted to the Provinces in terms of section 109, and that the Dominion power of legislation over lands reserved for the Indians was not inconsistent with the beneficial interests of the Province therein. In giving judgment Lord Watson says,¹⁰ "In construing these enactments, (of the B. N. A. Act) it must always be kept in view that wherever public land, with its incidents, is described as the property of or as belonging to the Dominion or a Province, these expressions merely import that the right to its beneficial use, or to its proceeds, has been appropriated to the Dominion or the Province, as the case may be, and is subject to the control of its Legislature, the land itself being vested in the Crown." And,¹¹ "The enactments of section 109 are, in the opinion of their Lordships, sufficient to give to each Province, subject to the administration and control of its own Legislature, the entire beneficial interest of the Crown in all lands within its boundaries, which at the time of the union were vested in the Crown, with the exception of such lands as the Dominion acquired right to under section 108, or might assume for the purposes specified in section 117. Its legal effect is to exclude from the duties and revenues, appropriated to the Dominion (by section 102) all the ordinary territorial revenues of the Crown arising within the Provinces. That construction of the statute was accepted by this board in de-

⁹ S.-s. 5.

⁷ S.-s. 13.

⁸ (1888) 14 App. Cas. 46.

⁹ (1888) 8 App. Cas. 767.

¹⁰ At p. 56.

¹¹ At page 57.

ciding A.-G., Ont., v. Mercer,² where the controversy related to land granted in fee simple to a subject before 1867, which became escheat to the Crown in the year 1871."

³ "Had its Indian inhabitants been the owners in fee simple of the territory which they surrendered by the treaty of 1873, A.-G. v. Mercer⁴ might have been authority for holding that the Province of Ontario could derive no benefit from the cession, in respect that the land was not vested in the Crown at the time of the union. But that was not the character of the Indian interest. The Crown has all along had a present proprietary estate in the land, upon which the Indian title was a mere burden. The ceded territory was, at the time of the union, land vested in the Crown, subject to an interest other than that of the Province in the same, within the meaning of section 109, and must now belong to Ontario in terms of that clause, unless its rights have been taken away by some provision of the Act of 1867 other than those already noticed."

⁵ "In the course of the argument the claim of the Dominion to the ceded territory was rested upon the provisions of section 91, sub-section 24, which in express terms confers upon the Parliament of Canada power to make laws for 'Indians and lands reserved for the Indians.' It was urged that the exclusive power of legislation and administration carried with it, by necessary implication, any patrimonial interest which the Crown might have had in reserved lands. . . . Their Lordships are, however, unable to assent to the argument for the Dominion, founded on section 91, sub-section 24. There can be no *a priori* probability that the British Legislature, in a branch of the statute which professes to deal only with the distribution of legislative power, intended to deprive the Provinces of rights which are expressly given to them in that branch of it which relates to the distribution of revenues and assets. The fact that the power of legislating for Indians, and for lands which are reserved to their use, has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the Provinces to a beneficial interest in these lands, available to them as a source of revenue, whenever the estate of the Crown is disencumbered of the Indian title."

The above case establishes that the Crown lands within the confines of Ontario belong to the Province, and this includes all public lands in Ontario not given to the Dominion under sections 108

² (1883) 8 App. Cas. 767.

³ At page 58.

⁴ (1883) 8 App. Cas. 767.

⁵ At page 59.

and 117, irrespective of whether the so-called Indian title has been surrendered or not; but, when there has been no surrender, subject to the so-called Indian title.

The treaty in question in *St. Catharines M. & L. Co. v. The Queen*,⁶ was further discussed by Rose, J., in his learned and elaborate judgment in *Caldwell v. Fraser*.⁷ There the plaintiff, having a prior patent from the Dominion and a subsequent patent from Ontario of the mining location X42 on Sultana Island, sought to set aside a patent from the Ontario Government to the defendant of the adjoining land covered by water, on various grounds.

Rose, J., says: "By the North-West Angle Treaty, Number 3, made on the 3rd day of October, 1873, the Indian inhabitants ceded and released the territory therein named to the Government of the Dominion of Canada for Her Majesty the Queen and her successors forever. That territory included the lands in question.

In the treaty it is provided as follows: "And Her Majesty the Queen hereby agrees and undertakes to lay aside a reserve for farming lands, due respect being had to lands at present cultivated by the said Indians, and also to lay aside and reserve for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada, in such manner as shall seem best, other reserves of land in the said territory hereby ceded, which said reserves shall be selected and set aside where it shall be deemed most convenient and advantageous for each band or bands of Indians by the officers of the said Government, appointed for that purpose, and such selection shall be so made after conference with the Indians. . . . And provided also that the aforesaid reserves of land, or any interest or right therein or appurtenant thereto may be sold, leased, or otherwise disposed of by said Government for the use and benefit of said Indians with the consent of the said Indians entitled thereto first had and obtained. . . . Her Majesty further agrees with her said Indians that they, the said Indians, shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by her Government for the Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government."

⁶ *Supra*.

⁷ Delivered 31st January, 1898, not yet reported; in appeal.

Subsequently, instructions were given to J. S. Dennis, Surveyor-General, by letter from the Minister of the Interior, dated the 7th August, 1875, to select the reserve secured to the Salteaux tribe of the Ojibeway Indians under Treaty Number 3. The letter of instructions directed Mr. Dennis to select the reserves after conference with the Indians, and in compliance with the provisions of the treaty.

Subsequently, on the 15th July, 1879, the Minister of the Interior instructed A. H. Vaughan to proceed to Winnipeg River and to the Lake of the Woods for the purpose of surveying and defining the boundaries of the several Indian reserves which were indicated upon the map of Keewatin therewith sent, amongst others, 38 B. In pursuance of these instructions the reserves were defined, and, on the 8th October, 1886, the Rat Portage band of Indians, resident on reserves 38 A, B, and C, on the Lake of the Woods and Winnipeg River, did 'release, remise, surrender, quit claim and yield up unto our Sovereign Lady the Queen, her heirs and successors forever,' six hundred acres more or less, being composed of that certain island known as the Sultana Island, and also known as mining location X42, situate near the north shore of the Lake of the Woods, to have and to hold the same unto Her said Majesty the Queen, her heirs and successors forever, in trust to (sell) the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people, and upon the further condition that all the moneys received from the said lands thereof shall, after deducting the usual proportion for expenses of management, be placed at interest, and that the interest money accruing from such investment shall be paid annually or semi-annually to us and our descendants forever.

On the 27th November, 1888, a patent was granted to Henry Bulmer et al. of 'all that parcel or tract of land situate on Sultana Island in the Lake of the Woods, being formerly a part of the Indian reserve known as Indian Reserve, 38 B, Lake of the Woods (but now surrendered), at present known as Mining Location 'X42,' Sultana Island, and more particularly described as follows: . . . to have and to hold the said parcel of land and all minerals, precious and base, which may be found therein, unto the said Henry Bulmer, et al., their heirs and assigns forever.'

This grant was stated to have been made in consideration of the fulfilment of the Indian Lands Mining Regulations of our Dominion of Canada.

The plaintiff got in the title of these various grantees, by instruments which were exhibited at the trial, and also the title of X43, for which letters patent were also issued by the Dominion.

The defendants dispute the right of the Dominion to sell or grant such lands."

After quoting from the judgment of Lord Watson in the *St. Catharines Milling, etc., case*,^a the learned Judge proceeds:—

The result seems to be that as there was no power in the Indians to sell or transfer their interest in the land, but only to surrender their right to the Crown by formal contract, no act of theirs could confer on either the Dominion or the Province the power of sale, and that the right and power of sale must be found to exist independently of any Act or treaty. There is no doubt that the Crown might dispose of the lands without reference to the title of the Indians or their claims, but the policy has not been so to do, and by the British North America Act, there was not, I think, vested in the Province the right to sell these lands or interfere with the Indians until after a formal surrender of the lands to the Crown. I do not now consider the right of the Province to sell its interest in the land so as to vest in the purchaser the lands subject to the right of the Indians.

The exclusive power of legislation and administration which was conferred upon the Parliament of Canada, did not, I think, in fact it is practically so declared, confer any power to sell the lands. The lands were the property of or belonged to the Province, and, subject to the Indian title, or the right of the Indians to the use of the land, it seems to me the power of sale must be in the Province. The Parliament of Canada has by legislation provided for the transfer by lease, sale or will of the lands by the Indians among themselves. I think the Parliament of Canada could not have given the Indians power to sell the lands to a stranger, nor could it by legislation have validly asserted the right to sell the lands. It would seem anomalous that if the lands and the proceeds of the sale of the lands should belong to the Province, the Dominion could interfere with these lands, fix the price, and sell them without regard to the interests of the Province, even although that was done under assertion of the right to legislate respecting Indians and lands reserved for Indians. Therefore, it seems to me that any surrender or cession by the Indians of their lands or their rights left the power of sale exactly where it was prior to such surrender or cession. That power, I think, was in the Province, subject to the surrender or other extinguishment of the Indian title.

It would seem perfectly clear, therefore, that if we were dealing in this action with lands which had been formally surrendered to the

^a (1888) 14 App. Cas. 46.

Crown, and which were not embraced within that provision of Treaty Number 3, in which Her Majesty agreed to set aside reserves, the assertion of right by the Dominion to sell or grant such lands would have no foundation to support it. But it is said that the lands in question, being lands which were reserved out of such treaty, in other words, excepted from the grant, stand in a different position, and the rights respecting them are not the same as with respect to the lands which were surrendered, and which were not to form part of the reserve, under the section to which I have referred. The agreement was implemented by the Dominion by having surveys made, and, subsequently, as I have already pointed out, there was a release or a surrender of Sultana Island to Her Majesty. But it is said that because the habendum in such release was in trust to (sell) the same to such person or persons, and upon such terms as the Government of the Dominion of Canada might deem most conducive to the welfare of the Indians, therefore the power of sale rested in the Dominion. It seems to me that cannot be so. It will be observed that substantially such a provision was in Treaty Number 3, so that, if effective in the surrender, it was effective in the treaty. As I have pointed out, the Indians had no power of sale, and therefore could confer none by any release or surrender. The result would seem to me to be that either the surrender was ineffectual and had no force, or that it was a surrender subject to its provisions being carried out by the Crown in its integrity, as far as the Indians were concerned, i.e., that the purchase money of the lands when sold should be at interest, and that the interest money should be paid annually or semi-annually to the Indians and their descendants forever. The administration of such fund would be with the Dominion, and possibly, I think, certainly the Province is bound in accepting the benefit of the surrender to relieve the Dominion of such obligation or rather to enable the Dominion to perform such promise.

I think that the opinion that the surrender took effect notwithstanding the provisions to which I refer, is supported by reference to that clause of Treaty Number 3, which I have above set out, with reference to the right of the Indians to pursue their avocations of hunting and fishing throughout the tract surrendered. It will be observed that that right is reserved subject to such regulations as may from time to time be made by Her Majesty's Government of her Dominion of Canada, and is only limited by such regulations, and by the taking away from the territory of such tracts as might from time to time be required of, taken up for settlement, mining, lumbering, or other purposes, by the said Government. Notwithstanding

this clause, it was held in the *St. Catharines Milling Company* case, that the Dominion had no right to interfere with the lumber, and that the right of the Province to the lumber was not taken away. In other words, although over the whole of the surrendered tract the Indians had practically reserved their rights of hunting and fishing to be interfered with alone by the Government of the Dominion, and although by such clause, as far as the Indians could, they gave to the Dominion Government the right to dispose of lands for mining or lumbering, or other purposes, it was held that that clause did not confer on the Dominion any right that it had not before, nor was the treaty held invalid by reason of such provision. The right to regulate the pursuit of hunting and fishing existed independently of the treaty. The right to take up lands for mining or lumbering was not in the Dominion before the treaty, nor was it given by the treaty, nor, as it appears, was the treaty held any the less valid, although there was in it an abortive attempt to confer such right upon the Dominion.

Notwithstanding the existence of such a clause, the treaty was held to be effective as a surrender, and the right of the Province to the lumber was also declared. It would follow, it seems to me, that notwithstanding the provision in the surrender of *Sultana Island*, that the land was conveyed in trust to sell the same to such persons as the Government of the Dominion might deem most conducive, and upon further trust to invest the moneys received from the lands and pay the interest over to Indians, the surrender was effective, and the trust was to be executed as nearly as might be, having regard to the rights of the Dominion and of the Province.

If the proper conclusion be that because of the form of the surrender it took no effect, because it was on a trust or condition which the Dominion could not perform, then the further conclusion would be, that there would be no right to sell these lands, until by surrender or otherwise, the rights of the Indians had been disposed of.

I think, however, that, having regard to the decision with reference to the *Treaty Number 3*, for the reasons I have given, the surrender may be held to have been effective, the power of sale to be exercised by the Province, where it rested prior, but, subject to the surrender, and the administration of the fund which is to stand in lieu of the land is to be by the Dominion, which has the exclusive power of legislation and administration conferred upon it.

But, even if I had come to the conclusion that the power of sale was conferred upon the Dominion by the terms of the treaty, that would not dispose of the matter in dispute with reference to the

precious metals. By decision in the case of *The Attorney-General of British Columbia v. The Attorney-General of Canada*,⁹ the precious metals would not pass to the Dominion, nor the right to dispose of them, upon any argument that has been adduced before me; therefore, even admitting, for the sake of argument, that the Dominion had the power to sell these lands, it had no power to dispose of the precious metals. Assuming that the Indian right or title has been surrendered and extinguished, and that the Dominion had a power of sale which it has exercised, then it seems to me that the right of the Province to enter upon the lands and dig and carry away the ores, and do such other things as are necessary for the purpose of getting out the ores and disposing of such right by lease, sale or otherwise, arose as soon as such sale was made. I think it is reasonably clear, therefore, that the power to dispose of the precious metals was beyond question in the Province and not in the Dominion, and that the patent from the Dominion to the plaintiffs' predecessors in title, even if valid as a grant of the land, was invalid as a grant of the precious metals, unless, as in the *British Columbia* case, the Province has given to the Dominion the power to sell such land, which has not been suggested. Since the decision in the *St. Catharines Milling Company* case, the Dominion has not assumed to sell unsurrendered Indian lands. Mr. Orde said that the only dealing in respect to them was to refuse applications to purchase.

And equally, it seems to me, as to unsurrendered lands the Province has no power to sell without the consent of the Dominion, which would be given if the Dominion Parliament has the right to legislate away the rights of the Indians.

On the 16th April, 1894, an agreement was entered into between the Dominion and the Province, pursuant to the provisions of the Statute of Canada,¹⁰ and the Statute of Ontario,¹ by which the rights of hunting and fishing by the Indians throughout the tract surrendered by Treaty Number 3, not including the lands agreed to be set apart as reserved under such treaty, were declared not to continue with reference to any tracts which had been or might from time to time be required or taken up for settlement, mining, lumbering, or other purposes by the Government of Ontario, or persons duly authorized by the Government of Ontario; and by the said legislation and agreement the Dominion Parliament also conceded the right of the Province to have a voice

⁹ (1889) 14 A. C. 295.

¹⁰ 54 & 55 Vict. c. 5.

¹ 54 Vict. c. 3.

in the selection of the reserves agreed to be set apart under Treaty No. 3. This legislation and agreement were apparently upon the admission by both Legislatures that the effect of Treaty No. 3 was to surrender all the lands, named in such treaty, and that the effect of such surrender, as far as such lands were within the limits of Ontario, was to vest such lands in the Province, and that the provisions as to setting apart reserves for the Indians was an agreement by Her Majesty to set the same apart out of the lands of the Province. If this was not the theory, I do not understand why the Dominion conceded the right of the Province to be consulted with respect to the laying out of such reserves. It certainly was open to argument that the Indians surrendered only such lands as were not agreed to be set apart by the Dominion, and that when such lands were so set apart or designated, the Indians held them upon the same right or title as before the surrender, subject to any variation in such right or title by the terms of the surrender. In other words, that they were excepted from the grant upon the terms set out in the surrender, and that the surrendered lands were not defined until the reserves had been set apart. It is certain the Indians did not intend to surrender absolutely all their lands, but only a portion of them. Support is given to the argument that the lands to be included in the reserves agreed to be set aside were not considered as surrendered lands by the provision in the treaty preserving to the Indians the right to pursue their avocations of hunting and fishing throughout the tract surrendered. This, I think, manifestly does not refer to the lands to be set apart, over which, as of course, such rights would exist; and in the agreement referred to between the two Governments, the extinguishment of the right of hunting and fishing is confined to the lands other than 'the reserves to be made' under the treaty.

This legislation and this agreement also serve as a declaration by both Legislatures that the right exists in the Dominion to extinguish the Indian title by legislation, because, as I have said, it did extinguish the rights of hunting and fishing over the lands surrendered, as I have above set out. I say this, for I do not suppose the Province claimed the right to legislate away such rights.

I take it that this legislation and the agreement thereunder are also a declaration that, as to the reserves set apart prior or subsequent to the making of the agreement, the right of the Indians to such lands under the provisions of Treaty Number 3 is acknowledged, subject, of course, to the concurrence or acquiescence by the Province in the location of such reserves, and the exclusive power of

legislation and administration respecting the Indians upon such reserves, and the lands so reserved, was in the Parliament of Canada.

Clause 4 of such agreement is important. It is as follows: 'That in case of all Indian Reserves so to be confirmed or hereafter selected, the waters within the lands laid out or to be laid out as Indian Reserves in the said territory, including the land covered with water lying between the projecting headlands of any lake or sheet of water not wholly surrounded by an Indian reserve or reserves, shall be deemed to form part of such reserve, including the islands wholly within such headlands, and shall not be subject to the public common right to fishery by others than Indians of the band to which the reserve belongs.'

Clause 2 of such agreement is as follows: 'That to avoid dissatisfaction or discontent among the Indians, full enquiry will be made by the Government of Ontario as to the reserves, before the passing of the said statutes, laid out in the territory, with a view to acquiescing in the location and extent thereof, unless some good reason presents itself for a different course. 3. That in case the Government of Ontario, after such enquiry, is dissatisfied with the reserves, or any of them already selected, or in case other reserves in the said territory are to be selected, a joint commission or joint commissions shall be appointed by the Governments of Canada and Ontario to settle and determine any question, or all questions relating to such reserves or proposed reserves.'

The defendants contend that the surveys made in laying out 38 B did not include the land in question, but that the southern boundary was the shore line, and that therefore the lands in question were lands surrendered under Treaty Number 3; and further, that the Province never did confirm the laying out of 38 B, and so clause 4 did not apply to make the lands in question part of the reserve. There was no evidence of any formal act done by way of acquiescence on the part of the Province except as the history of the case may afford room for an argument.

The plaintiff's contention is that the lands in question were included in the reserve 38 B, and if the description of such reserve did not in terms include it, that clause 4 did apply; that although there may be no evidence of any explicit declaration of acquiescence in the location of 38 B, the fact that no dissatisfaction has been expressed by the Government of Ontario is evidence of an acquiescence, and that, therefore, these are lands declared by section 4 to be within 38 B.

I do not find it necessary to determine this issue between the

parties. The surrender of the 8th of October, 1896, being of Sultana Island only, does not include the land covered by water, but must be confined to the description, and therefore does not include any of the land in dispute in this action. So that if 38 B is to be read as including such land, the question has been surrendered, and therefore, unless the consent of the Dominion has been obtained to its sale, or disposition, the right of the Province to make such sale or disposition has not yet arisen.

I conclude, therefore, that the Dominion had no power to sell or grant the Indian lands, whether surrendered or unsundered; (2) that even assuming the right to sell unsundered lands, it had no right to sell or dispose of precious metals, and that, therefore, its patent to the plaintiff was void; (3) Sultana Island having been surrendered, the Province clearly had the right to sell or grant such lands; and therefore the letters patent from the Province of X42 and X43 to the plaintiff are good and valid, but they conveyed nothing beyond the land surrendered; (4) that if the land covered by water in front of the Sultana Island was part of the reserve and unsundered, the Province had no right to grant the same; (5) that if the lands in question are part of 38 B, and unsundered, the grants from the Province are, if valid at all, only valid to the extent of conveying the right of the Province to such lands subject to the Indian title, and the right to take the precious metals from under such lands, in as far as the same might be done without affecting what I may call surface rights; (6) that the plaintiff had no right to complain of the issue of the letters patent of D 193A, assuming such issue to have been valid, because he had no contract with the Crown at the time of the grant, and no right which was enforceable against the Crown. Nor did such letters patent issue by error or improvidence, or in disregard of the rights of the plaintiff as riparian owner or otherwise; (7) that the plaintiff had no right to claim the interference of the Court because of the erection of the crib; (8) that the complaint as to the overlapping of the descriptions is not sustained.

I may further say that if I am correct in the view that the Province had no power to make a grant of any present right to the unsundered lands under the water, and if Fraser or the defendant company is interfering with such lands without right, then, in my opinion, on the facts of this case, the plaintiff is not in a position to raise any such question. The only parties who can complain are the Indians, or the Dominion Government, as having control of Indian affairs."

The propositions of Mr. Justice Rose are avowedly based on the decision of the Privy Council in the *St. Catharines Milling Case*,² and it must be borne in mind that the lands in question in the Privy Council and before Rose, J., were situate in a tract of land declared to belong to the Province of Ontario by virtue of section 109 of the B. N. A. Act, and over the management and sale of which exclusive jurisdiction was vested in the Provincial Legislature by sub-section 5 of section 92 thereof.

Consequently, they would not apply to Indian Reserves (properly so called) in Ontario set apart prior to 1867, either by the Imperial officers, who formerly administered Indians affairs, or by the Province of Canada.

Such reserves, unless surrendered by the Indians, become Indian lands within the meaning of "The Indian Act," and would fall within the legislative jurisdiction of the Federal Parliament and the executive control of the Dominion Government; and such lands, on the principles of *Church v. Fenton*³ and *Farewell v. The Queen*,⁴ would properly be granted under the Great Seal of Canada.

When granted by the Dominion to private purchasers, such lands would become subject to the jurisdiction of the Province over property and civil rights.

In *A.-G. of B. C. v. A.-G. of Canada*,⁵ Lord Watson says: "The title to the public lands of British Columbia has all the while been, and still is, vested in the Crown; but the right to administer and dispose of these lands to settlers, together with all royal and territorial revenues arising therefrom, had been transferred to the Province before its admission into the Federal Union."

As to the Precious Metals, Lord Watson says, in the same case: "According to the law of England, gold and silver mines, until they have been aptly severed from the title of the Crown, and vested in a subject, are not regarded as *partes soli*, or as incidents of the land in which they are found. Not only so, but the right of the Crown to land, and the baser metals which it contains, stands upon a different title from that to which its right to the precious metals must be ascribed. In the *Mines case*,⁶ all the Justices and Barons agreed that, in the case of the baser metals, no prerogative is given to the Crown; whereas, all mines of gold and silver within the realm, whether they be in the land of the Queen or of subjects,

² *Supra*.

³ (1880) 5 S. C. R. 239.

⁴ (1887) 14 S. C. R. 392.

⁵ (1888) 14 App. Cas. 295.

⁶ At p. 301.

⁷ At p. 302.

⁸ 1 Plowd. 336, 336a.

belong to the Queen by prerogative, with liberty to dig and carry away the ores thereof, and with other such incidents thereto as are necessary to be used for the getting of the ore." In British Columbia the right to public lands, and the right to precious metals in all provincial lands, whether public or private, still rests upon titles as distinct as if the Crown had never parted with its beneficial interests; and the Crown assigned these beneficial interests to the Government of the Province, in order that they might be appropriated to the same state purposes to which they would have been applicable if they had remained in the possession of the Crown."

And,⁹ "Their Lordships do not think it admits of doubt, and it was not disputed at the Bar, that section 109 of the B. N. A. Act must now be read as if British Columbia was one of the Provinces therein enumerated. With that alteration, it enacts that, all lands mines, minerals and royalties which belonged to British Columbia at the time of the Union shall for the future belong to that Province, and not to the Dominion. In order to construe the exception from that enactment, which is created by the 11th article of Union, it is necessary to ascertain what is comprehended in each of the words of the enumeration, and particularly in the word 'royalties.' The scope and meaning of that term, as it occurs in section 109, underwent careful consideration in the case of *A.-G., Ont., v. Mercer*.¹⁰ . . . In that case their Lordships were of the opinion that the mention of 'mines and minerals' in the context was not enough to deprive the word 'royalties' of what otherwise would have been its proper force."

The Earl of Selborne, in delivering the judgment of the Board, said:¹¹ "It appears, however, to their Lordships to be a fallacy to assume that because the word 'royalties' in this context would not be regarded as unofficious or insensible, if it were regarded as having reference to mines and minerals, it ought, therefore, to be limited to those subjects. They see no reason why it should not have its primary and proper sense as to (at all events) all the subjects with which it is here found associated, lands as well as mines and minerals—even as to mines and minerals, it here necessarily signifies rights belonging to the Crown *jure coronae*. It is not necessary for the purposes of this appeal to consider whether the word 'royalties,' as used in section 109 includes *jure regalia* other than those connected with lands, mines and minerals. *A.-G., Ont., v. Mercer*,¹ is an authority

⁹ At page 304.

¹⁰ (1883) 8 A. C. 767.

¹¹ (1882-3) 8 App. Cas. 778.

¹ *Supra*.

to the effect that, within the meaning of the clause, the word 'royalties' comprehends, at least, all revenues arising from the prerogative rights of the Crown in connection with lands, mines and minerals. The exception created by the 11th Article of Union from the rights specially assigned to the Province by section 109 is of 'lands' merely. The expression 'lands' in that article admittedly carries with it the baser metals; that is to say 'mines' and 'minerals' in the sense of section 109. Mines and minerals, in that sense, are incidents of land, and, as such, have been invariably granted, in accordance with the uniform course of Provincial legislation, to settlers who purchased land in British Columbia. But *jura regalia* are not accessories of land; and their Lordships are of opinion that the rights to which the Dominion Government became entitled under the 11th Article did not, to any extent, derogate from the Provincial right to 'royalties' connected with mines and minerals under section 109 of the B. N. A. Act."

The doctrine of this case, being based on section 109, is equally applicable to the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick.²

In *Atty.-Gen. B. C. v. Atty.-Gen. Canada*,³ and in *Esquimaux and Nanaimo Ry. Co. v. Bainbridge*,⁴ the Privy Council adopt the view in the *Mines* case, that mines Royal belong to the Crown by prerogative, "with liberty to dig and carry away the ores thereof, and with other such incidents thereto as are necessary to be used for the getting of the ore," in preference to the contrary view of Lord Hardwicke, C., in *Lydall v. Weston*.⁵

In *Caldwell v. Fraser*,⁶ Rose, J., held, following the British Columbia case, that the power to dispose of the precious metals was in the Province; that a patent from the Dominion of a portion of Sultana Island, even if valid as a grant of the land, was invalid as a grant of the precious metals.

As to Indian Reserves, unless the instrument of reservation contains apt words of severance as regards the precious metals, i.e., gold and silver therein, the title to such precious metals remains in the Crown, and passed to the Province in which the reserve is situated under section 109 of the B. N. A. Act.⁷

² See also *Esquimaux and Nanaimo Ry. Co. v. Bainbridge*, (1896) App. Cas. 561.

³ (1889) 14 App. Cas. 302.

⁴ (1889) 14 App. Cas. 295.

⁵ (1739) 2 Atk. 19; see also *Sea-*

man v. Vaudrey, (1809) 16 Ves. 393; *Caldwell v. Fraser* (*supra*).

⁶ *Supra*.

⁷ See also *Woolley v. Attorney-General of Victoria*, (1877) 2 App. Cas. 163.

It follows of necessity that in cases of reservations for the benefit of Indians made by or under authority of the Parliament of Canada since 1867, the title to the precious metals remains in the Province until disposed of by the Province.

As to the "Ordinance Lands" mentioned in 3rd Schedule to section 108, see *Commissioners of the Queen Victoria Niagara Falls Park v. Howard*,⁸ where it was held, affirming the decision of *Boyd, C.*,⁹ that the "chain reserve" along the bank of the Niagara River and the slope between the top of the bank and the water's edge, did not at Confederation pass to the Dominion Government as "Ordinance Lands," but remained part of the public domain of Ontario.

The meaning of the words "**trust or interest**" in section 109 of the B. N. A. Act has been judicially considered;¹⁰ and also the word "royalties."¹¹

In the *Fisheries Case*,² it was held,³ that at the time of Confederation the beds of all lakes, rivers and other waters within the territorial limits of the several provinces which had not been granted by the Crown, were vested in the Crown as representing the Provinces respectively, and that there was no distinction in this respect between the various classes of waters; whether salt waters, fresh waters, tidal or non-tidal, navigable or non-navigable, etc., and that the ungranted beds of all such streams and waters were therefore lands belonging to the several Provinces in which the same were situated; and under section 109 of the B. N. A. Act became, upon Confederation, vested in the Crown in right of the several Provinces, subject only to the exception respecting existing trusts and interests mentioned in that section, and excepting the beds of public harbors, which, by the operation of section 108, were vested in the Dominion.

No distinction exists at law between the title or proofs of title to **land covered by water** and the title to *terra firma*.⁴

⁸ (1896) 23 A. R. 355.

⁹ (1892) 23 O. R. 1.

¹⁰ See *Attorney-General of Canada v. A. G. of Ontario* (the *Indian Annuities Case*), 1897, Ap. C. 199; *St. Catharines M. & L. Co. v. The Queen*, (1888) 14 Ap. Cas. 46, per Lord Watson, p. 54; *The Canada Central Railway Co. v. The Queen*, (1873) 20 Gr. 273; *Booth v. McIntyre*, (1880) 31 U.C.C.P. 183.

¹¹ *Church v. Blake*, (1876) 2 Q. L. R. 236; *Mercer's Case*, (1883) 8 Ap. Cas. 767; *Precious Metals Case*, (1888) 14 Ap. Cas. 295. As to meaning of phrase—"Set apart for public purposes," *Mayor of Emdon v. Blackwood*, (1877) 2 App. Cas. 574, appeal from Sup. Ct. of Victoria.

² (1897) 26 S. C. R. 444.

³ At page 514.

⁴ Hall "on the Sea Shore," ix.

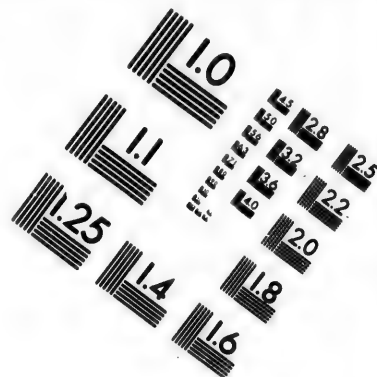
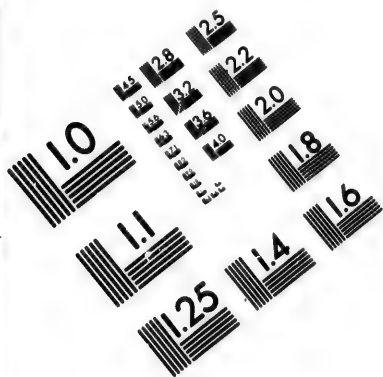
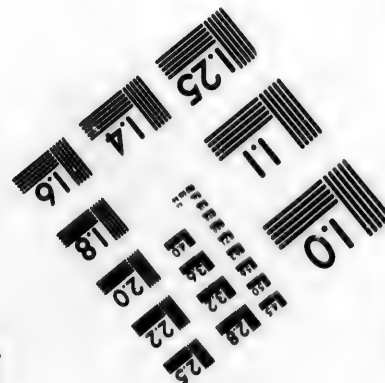
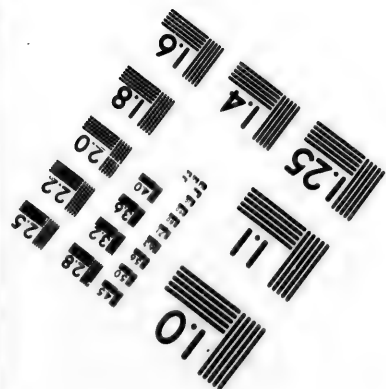
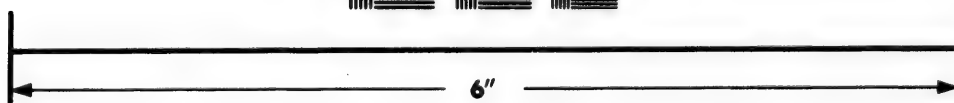
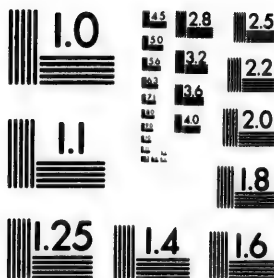


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Origin of Title. All lands in Canada, whether terra firma, sea-shore or land covered by water, and the mines therein, whether mines Royal or base metals, having been vested in the Crown, or in the King of France, the origin of every title of a subject to such lands or mines must be a grant or other instrument of title from the Crown (or the King of France).

It is necessary in deducing a title under a grant from the Crown to examine the original grant in order to see whether any interest remains in the Crown or not; or whether any rent, condition or service has been reserved.⁵

By the municipal law of France, formerly in force in those parts of Canada which were French possessions, a grant of lands did not convey to the grantee a right to minerals, which remained the property of the King, and did not pass without special words; when the Sovereign granted the right to mine for gold or other precious metals, the owners of the soil had no rights whatever, and could claim indemnity only for any damage they might suffer in consequence of the ground being occupied by the opening of roads and mines.⁶

In dealing with grants from the Crown, it is important to bear in mind that the right of the Crown to land and the baser metals which it contains, stands upon a different title from that to which its right to the precious metals must be ascribed.^{6a}

According to the law of England, which in this respect (except as modified by Statute), is in force in all the territories and Provinces of Canada, except Quebec, gold and silver mines (i.e., Mines Royal), until they have been aptly severed from the title of the Crown and vested in a subject, are not regarded as *partes soli*, or as incidents of the land in which they are found.⁷

By section 92 of the B. N. A. Act, s.-s. 5, exclusive jurisdiction is given to the Provinces to make laws in relation to the management and sale of the public lands belonging to the Province.

And by sub-section 13, in relation to Property and Civil Rights in the Province.

Title. Consequently, to be valid, a grant of Provincial lands or of the mines and minerals therein, must be authorized by the proper Provincial authorities.

⁵ See *Pickering v. Lord Sherbourne*, 1 *Craw. & Dix.* ab. 254, also the Statute by virtue of which such grant is made.

⁶ *Regina v. DeLery*, (1883) 6 *Legal News*, 402.

^{6a} *Precious Metals Case*, (1889) 14 *Ap. Cas.* 302.

⁷ *Ib.* See also *Esquimaux & Nanaimo Ry. Co. v. Bainbridge*, (1896) A. C. 561.

In Ontario, there is a department for the management and sale of the public lands called the Department of Crown Lands, and presided over by "The Commissioner of Crown Lands," who is a member of the Provincial Government.

The Mines Act, R. S. O. 1897, c. 36, is printed hereafter in Chapter XIV., with notes thereon.

By section 3 of "The Ontario Mines Act,"⁸ all reservations of gold and silver mines contained in any patent issued prior to 4th May, 1891, are rescinded, and it is declared that all such mines (i.e., Mines Royal) in or upon such lands shall be deemed to have been granted in fee simple as part of such lands, and to have passed to the subsequent and present proprietors or owners thereof in fee simple; but the provisions of this section do not apply to lands patented under "The Free Grants and Homesteads Act."⁹

In cases of patents of land in Ontario, issued prior to 4th May, 1891, in which the mines or minerals were reserved to the Crown expressly, or by virtue of the statute or other law in force at the date of the issue of such patents, such mines or minerals so reserved, except Mines Royal, would remain vested in the Crown, as the above section deals only with gold and silver mines.

Section 10 provides, s.-s. (1). Crown lands not situated within any mining division, which are supposed to contain ores or minerals, and mining rights in lands, the ores or minerals whereof have been reserved by the Crown, may be sold or leased as mining lands in blocks, sections or lots, to be called "mining locations."

Sub-section (2). Where such Crown lands are situated within a mining division, they may be occupied and worked as "mining claims" under miners' licenses, as hereinafter provided.¹⁰

The Michipicoton Mining Division is the only mining division yet set apart in Ontario. To it Part III. of the Mines Act and the Regulations issued thereunder apply.

Parts I., II. and IV. apply to the remainder of Ontario.

In Quebec. All lands supposed to contain mines or ores may be acquired from the Commissioner of Crown Lands, a member of the Provincial Government, pursuant to the 9th section of the Revised Statutes of Quebec, 1888,¹ as amended, the text of which is set forth and dealt with hereafter in Chapter XV.

In New Brunswick. The administration relating to Mines and Minerals devolves upon the Department of Crown Lands, and the

⁸ R. S. O. 1897, c. 36.

⁹ R. S. O. 1897, c. 29.

¹⁰ 60 Vict. c. 8, s. 6.

¹ Clauses 1421 to 1582, inclusive and Appendix of Schedules

Surveyor-General, a member of the Provincial Government, is charged with the duty of carrying out and enforcing the provisions of the law in regard thereto, entitled "The General Mining Act,"² the text of which, with notes and cases, is set forth and dealt with hereafter in Chapter XVI.

In Nova Scotia. The administration of mines and minerals is committed to the Commissioner of Public Works and Mines, an officer appointed by the Governor in Council and the law in regard thereto as contained in the Provincial Statute 55 Vict. c. 1 (passed 30th April, 1892), as amended in 1893, 1895, 1896, 1897 and 1898, the text of which, with notes and cases, is set forth and dealt with hereafter in Chapter XVII.

In British Columbia the administration of mines and minerals is committed to the Chief Commissioner of Lands and Works, and the law in regard thereto is contained in Provincial Statutes entitled as follows:—

The "Mineral Act," R. S. B. C. (1897), c. 135.

"Placer Mining Act," R. S. B. C. (1897), c. 136.

"Coal Mines Act," R. S. B. C. (1897), c. 137.

"Coal Mines Regulation Act," R. S. B. C. (1897), c. 138.

"Inspection of Metalliferous Mines Act," R. S. B. C. (1897), c. 134, the text of all of which, with notes and cases, are set forth and dealt with hereafter in Chapter XVIII.

Manitoba. Section 22 of "Provincial Lands Act of Manitoba,"³ declares that no grant from the Crown of lands in freehold or for any less estate has operated, or will operate, as a conveyance of the gold or silver mines, or any other mineral therein, unless the same are expressly conveyed in such grant.

Section 21 of the R. S. of Manitoba, 1891, provides that lands containing coal, or other minerals, shall not be subject to the provisions of the Provincial Lands Act, but shall be disposed of in such manner and in such terms and conditions as may from time to time be fixed by the Lieutenant-Governor in Council, by regulations to be made in that behalf.

No such regulations have yet been passed, because most of the unpatented mineral lands in Manitoba are the public property of the

² 54 Vict. (1891), c. 16 (passed 16th April, 1891), as amended in 1892, 1893 and 1896, the text of which with notes and cases is set

forth and dealt with hereafter in c. xvi.

³ R. S. M. 1891, c. 120.

Dominion, and, therefore, to be disposed of under the Dominion Mining Regulations.⁴

Indian lands containing minerals in Manitoba are disposed of under the Indian Lands Mining Regulations.⁵

Prince Edward Island. There are no mines or mining laws in this Province.

The "North-West Territories." The Dominion Lands Act,⁶ passed pursuant to the authority conferred by section 5 of the Imperial Act, 31-32 Vict. c. 105, upon the Parliament of Canada, is declared, by section 3, to apply exclusively to the public lands included in Manitoba and the several territories of Canada, except as provided by any other Act of the Parliament of Canada. Section 47 of this Act provides that lands containing coal or other minerals shall be disposed of in such manner and on such terms and conditions as are from time to time fixed by the Governor in Council, by regulations made in that behalf. The regulations at present in force are printed in full, with comments, hereafter in Chapter XIX.⁷

Section 48 of this Act provides that no grant from the Crown of lands in freehold, or for any less estate, shall be deemed to have conveyed, or to convey the gold and silver mines therein unless the same are expressly conveyed in such grant.

The District of Keewatin was a portion of the North-West Territories, and was organized as a separate district under this name by "The Keewatin Act."⁸

Provisional Districts. By Order in Council of the Governor-General in Council, dated 17th September, 1889, the boundaries⁸⁸ of the Provisional Districts of Assiniboia, Saskatchewan, Alberta and Athabasca were defined.

By Order in Council of the Governor-General in Council, dated 2nd October, 1895,⁹ the whole of the remaining unorganized and unnamed portion of the North-West Territories was divided into four provisional districts named, respectively, Ungava, Franklin, Mackenzie and Yukon.¹⁰

⁴ See Chapter XIX.

⁵ See Chapter XIX.

⁶ 49 Vict. (D.) c. 54; R. S. C. (1886) c. 54.

⁷ See c. xix

⁸ R. S. C. c. 53; for boundaries, see Appendix I. The boundaries fixed by the Keewatin Act were originally fixed by 39 Vict. (D.) c. 21; now R. S. C. (1886) c. 53,

but were subsequently recommended to be enlarged by Dominion Order in Council, dated 2nd October, 1895, see Appendix I.

⁸⁸ See Bligh's Orders in Council, (1889) at p. 935.

⁹ Passed pursuant to R. S. C. c. 50, s. 17.

¹⁰ For boundaries, see Appendix I.

The District of Yukon (a portion of which is sometimes referred to as "the Klondike"),¹ was, by Order in Council dated 29th July, 1897,² constituted a Land Registration District, with the Land Titles Office at Fort Cudahy, to take effect when a Registrar should be appointed.

Indian Lands. By sub-section 24 of section 91 of the B. N. A. Act, exclusive jurisdiction is given the Dominion Parliament to make laws relating to Indians, and lands reserved for Indians, and pursuant to this authority has been passed "The Indian Act."³ The expression "Indian Lands," is defined by sub-section (m) of section 2 to mean any reserve or portion of a reserve surrendered to the Crown.

Section 41 enacts that all Indian lands which are reserves, or portions of reserves surrendered or to be surrendered to Her Majesty, shall be deemed to be held for the same purposes as before the passing of the Act; and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender, and the provisions of the Indian Act.

In pursuance of this authority, the Governor in Council has passed the Indian Lands Mining Regulations.⁴

Patents of Indian lands are required by section 45 of the Indian Act to be signed by the Superintendent of Indian Affairs, or his deputy, or some other person specially authorized, and to have the Great Seal of Canada affixed.

In *Church v. Fenton*,⁵ Gwynne, J., in dealing with a parcel of land which formed part of a tract of land surrendered by the Indians in 1854 to the Crown, observed,⁶ that "the management and sale of Indian lands remained in the Dominion Government, and the power to grant letters patent."

Under the terms of the surrender, the interest on the moneys to arise out of the sale of the lands was to be paid to the Indians half-yearly.

A sale (subsequent to the Dominion patent) of the land for taxes levied (under Provincial legislation) before the issue of the patent, but after the sale by the Crown, was upheld, and this decision was affirmed by the Court of Appeal,⁷ and by the Supreme Court.⁷

¹ For boundaries, see App. 1. For boundaries of the "Yukon Judicial District," vide *Canada Gazette*, vol. xxxi., p. 392.

² Vide *Canada Gazette*, vol. xxxi., p. 350, dated 21st August, 1897.

³ R. S. C. 1886, c. 43.

⁴ Dealt with hereafter in c. xix.

⁵ (1878) 28 U. C. C. P. 384.

⁶ At p. 400.

⁷ Ib. (1879) 4 A. R. 159.

⁸ Ib. (1880) 5 S. C. R. 239.

In *Church v. Fenton*,⁸ Moss, C.J.O., says that upon the lands there in question being surrendered by the Indians, they became ordinary unpatented lands within the meaning of the Assessment Acts. The history of the legislation upon this subject has been lucidly traced and its effect fully explained in the judgment of Gwynne, J.⁹

In *Farwell v. The Queen*,¹⁰ King, J., said: "The rights of the Crown, territorial or prerogative, are to be passed under the Great Seal of the Dominion or Province (as the case may be) in which is vested the beneficial interest therein, otherwise they can not be enjoyed by it, or under its control."

In the Exchequer Court,¹ Burbidge, J., whose judgment was confirmed by the Supreme Court, said: "Letters patent for any lands in the railway belt sold by the Dominion Government may be issued under the Great Seal of Canada in accordance with the statutes passed by its Parliament in the exercise of a clear and undoubted authority to make laws in respect of the public property of the Dominion."²

⁸ (1879) 4 A. R. 162.

⁹ (1878) 28 U. C. C. P. 387.

¹⁰ (1894) 22 S. C. R. 531.

¹ (1893) 3 Ex. Ct. R. 290.

² B. N. A. Act, s. 91, s.-s. 1; R. S. C. 1886, c. 56.

CHAPTER II.

MEANINGS OF TERMS.

"Mines" and "Minerals." Lord Watson points out in *Glasgow v. Farie*,¹ that "mines" and "minerals" are not "definite terms: they are susceptible of limitation or expansion, according to the intention with which they are used," and says, "in construing a reservation of mines and minerals, whether it occur in a private deed or in an Inclosure Act, regard must be had, not only to the words employed to describe the things reserved, but to the relative position of the parties interested, and to the substance of the transaction or arrangement which such deed or act embodies."²

Mr. Justice Street, referring to the judgment of Lord Macnaghten in the *Farie* case, says, in *Ontario Natural Gas Co. v. Smart*:³ "It has been laid down that the word 'minerals,' when used in a legal document or an Act of Parliament, must be understood in its widest signification unless there be something in the context or in the nature of the case to control its meaning."

Lord Macnaghten also said in the *Farie* case: "The word 'minerals' undoubtedly may have a wider meaning than the word 'mines.' In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life. In some of the reported cases it seems to be laid down, or assumed, that to be a mineral a thing must be of commercial value, or workable at a profit. But it is difficult to see why commercial value should be a test, or why that which is a mineral when commercially valuable should cease to be a mineral when it cannot be worked at a profit."

In the *Natural Gas Case*, which was affirmed in appeal,⁴ Street, J., also said: "In *Hext v. Gill*,⁵ Mellish, L.J., stated, at p. 712,

¹ (1888) 13 A. C. 675.

³ (1890) 19 O. R. 591, at p. 595.

² See also *Bell v. Wilson*, (1865) 2 Dr. & Sm. 401.

⁴ (1891) 18 App. R. 626.

⁵ (1872) L. R. 7 Ch. 699.

the result of the authorities to be that a reservation of 'minerals' includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the Court to give it a more limited meaning."

This definition in *Hext v. Gill* was criticized by Halsbury, L.C., in *Glasgow v. Farie*, but was subsequently adopted by the English Court of Appeal in *Earl of Jersey v. Guardians of the Neath Poor Law Union*,⁶ where it is stated that *Hext v. Gill* has not been overruled, and Lord Esher, M.R., says, "In my opinion the rule so laid down (in *Hext v. Gill*) is an excellent rule of construction, founded on a long series of cases."

In *Midland Railway Co. v. Checkley*,⁷ Lord Romilly, M.R., said, "Stone is, in my opinion, clearly a mineral; and in fact everything except the mere surface, which is used for agricultural purposes; anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fire-clay, or the like, comes within the word mineral. Where there is a reservation of the mines and minerals from a grant of land, every species of stone, whether marble, limestone or ironstone, comes, in my opinion, within the same category."

In *Midland Railway Co. v. Robinson* ⁸ it was decided (by Lords Herschell and Watson, Lord Macnaghten, dissenting), that the mines of coal, ironstone, slate and other minerals, which section 77 of the "Railway Clauses Act, 1845," excepts out of the conveyance to the railway company, and the "mines or minerals" under the railway, or within the specified distance, which section 78 empowers the owner to give notice of his intention to work, include not only beds and seams of minerals got by underground working, but also such as can only be worked, and according to the custom of the district would be properly worked, by open or surface operation.

Lord Watson said, "In that case ⁹ I came to the conclusion that every substance, being a mineral within the meaning of these clauses, is reserved to the owner irrespective of the method by which it may be wrought. I there said that, in the enactments of section 18 of the "Waterworks Clauses Act, 1847" (which are in the same terms with sections 77 and 78 of the "Railway Clauses Acts" of 1845), the word 'mines' must be taken to signify 'all excavations by which the excepted minerals may be legitimately worked and got.'"

⁶ (1889) 22 Q. B. D. 555.

⁷ (1867) L. R. 4 Eq. 25.

⁸ (1889) 15 App. Cas. 19.

⁹ *Farie's Case*, 13 App. Cas. 657.

Lord Herschell says, in referring to his judgment in *Farie's case*,¹⁰ "I desire only to say that when I stated that in my opinion the reservation extended to all such bodies of mineral substances lying together in seams, beds, or strata as are commonly worked for profit, and have a value independent of the surface of the land, I did not intend by these latter words to suggest that the value of the mineral substances at the time of the reservation was the test whether they were reserved or not. I used them in order to emphasize the fact that it was not every scattered piece of mineral lying under the land that could be called a 'mine,' but only mineral substances lying in seams, or beds or strata."

It is to be borne in mind that Lord Herschell was the dissenting Judge in the *Farie* case.

"Mines" may mean subsoil containing the minerals, and not merely the minerals themselves.¹

In *Ballacorkish Silver Mining Co. v. Harrison*,² Lord Penzance who gave the judgment, said: ²¹ "The Act affirms that he has excepted out of the grant not only the minerals, but that portion of the soil which contains the minerals and which constitutes 'the mine.'"

In many statutes the terms "mines" and "minerals" are defined for the purposes of the Act containing the definition, and such statutory definitions, therefore, control the meaning of the terms defined for the purposes of the particular Act only.

ILLUSTRATIONS.

SUBSTANCES HELD TO BE INCLUDED IN THE TERM "MINE" OR "MINERAL."

In *Earl of Jersey v. Guardians of the Poor of Neath Poor Law Union*,³ a reservation in a conveyance of "all mines and minerals whatsoever, except stone quarries," was held to include brick, earth and clay.

In *Midland Railway Co. v. Robinson* ⁴ it was held in the House of Lords by Lords Herschell and Watson, Lord Macnaghten dissenting, that limestone is a "mineral" within the meaning of sections

¹⁰ 13 App. Cas. 657.

¹ Per Jessel, M.R., in *Eardley v. Granville*, (1876) 3 Ch. D., at p. 835; *Duke of Hamilton v. Graham*, (1871) L. R. 2 Sc. & Div. 166.

² (1873-4) L. R. 5 P. C. 49.

²¹ At p. 62.

³ (1889) 22 Q. B. D. 555.

⁴ (1889) 15 App. Cas. 19.

77 and 78 of the Railway Clauses Act, 1845; 8 & 9 Vict. (Imp.) c. 20.

In *Ontario Natural Gas Co. v. Smart*,⁵ Natural gas was held to be a "mineral" within the meaning of section 565 of Municipal Act, R. S. O. 1887, c. 184; now R. S. O. 1897, c. 223, s. 657.

In *Midland Railway Co. v. Checkley*,⁶ Romilly, M.R., held that a quarry of stone was included in the words "mines and minerals" in a Canal Act, 34 Geo. III. c. 93.

In *Cleveland v. Meyrick* ⁷ Malins, V.-C., held that under a bequest of "all shares in mines," etc., shares in a company limited to the working of slate quarries passed. The company's slate works were carried on almost entirely by underground or mining operations.

In *Tucker v. Linger* ⁸ the House of Lords assumed, but did not decide, that a reservation of mines and minerals included flints.

In *Hext v. Gill* ⁹ china clay was held to be included in a reservation of "all mines and minerals within and under the premises," etc.

In *Midland Railway Co. v. Haunchwood* ¹⁰ it was held that the word "mines" in 77th section of the Railway Clauses Act, 1845, included a bed of clay.¹

In *King v. Sedgley* ¹¹ property in which limestone obtained by underground workings was held to be a mine.

As to "freestone," see *King v. Dunsford*.²

As to "clay," see *R. v. Brettell*.³

In *Earl of Rosse v. Wainman* ⁴ a stratum of stone was held to be included in the word "minerals" in a reservation contained in an Inclosure Act.

In *Micklethwait v. Winter* ⁵ it was held that stones dug from quarries are minerals within meaning of an Inclosure Act.

In *Attorney-General v. Tomline*,⁶ coprolites beneath the surface of a copyhold tenement were decided to be minerals.

In *Attorney-General v. Welsh Granite Co.*,⁷ it was held by the Court of Appeal that granite was included in a reservation to the King of "minerals, etc.," and that the Crown was entitled to win the granite by open workings.

⁵ (1890) 19 O. R. 591, affirmed, 18 Ap. R. 626.

⁶ (1887) L. R. 4 Eq. 19.

⁷ (1868) 37 L. J. N. S. 125.

⁸ (1883) 8 App. Cas. 508.

⁹ (1872) 7 Ch. Ap. 699.

¹⁰ (1882) 20 Chy. Div. 552.

¹ Compare with *Glasgow v.*

Farle, 13 App. Cas. 657.

¹¹ (1831) 2 B. & Ad. 65.

² (1835) 2 Ad. & E. 568.

³ (1832) 3 B. & Ad. 424.

⁴ (1845) 14 M. & W. 859.

⁵ (1851) 6 Exch. 644.

⁶ (1877) 5 Ch. Div. 750.

⁷ (1887) 35 W. R. 617.

SUBSTANCES HELD TO BE NOT INCLUDED IN TERM "MINE" OR
"MINERAL."

In *Lord Breadalbane v. Menzies*⁸ the House of Lords held that a reservation of "all mines and minerals of whatsoever nature or quality" did not include a quarry of freestone suitable for building.

In *Darvill v. Roper*⁹ it was held that limestone quarried out of the surface was not within an exception (contained in deeds carrying out an agreement for a partition of lands) of "the mines of lead and coal, and other mines and minerals."

In *Glasgow v. Farie*¹⁰ it was held by the House of Lords (Lord Herschell dissenting), that common clay was not included in the reservation of "mines of coal, etc., or other minerals," contained in the 18th section of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17).

In *Elwes v. Brigg Gas Co.*,¹ Chitty, J., expressed the opinion (not however necessary to the decision of the case) that a boat 2,000 years old, found embedded four to six feet deep in clay, was not a "mineral."

In *Jones v. Cwmorthen Slate Co.*,² it was decided that works for the getting of slate are assessable to the income tax under 5 & 6 Vict. c. 35 (Sched. A.) as quarries of slate, and not as mines, though all the slate is obtained by underground working.

In *Simms v. Evans*³ the same concern was held by the Court of Queen's Bench to be a "mine" within the meaning of the Metaliferous Mines Act, 1872.⁴

In *Attorney-General for the Isle of Man v. Mylchreest*⁵ the Privy Council held that the word "minerals" in the Act of Settlement of 1703 did not include clay and sand.

"Quarry" was stated by Bramwell, L.J., in *Jones v. Cwmorthen Slate Co.*,⁶ to generally mean "a place where the material is got out in large shape like blocks, and not where it is got in small pieces like coal and ironstone."

In *Duchess Dowager of Cleveland v. Meyrick*,⁷ Malins, V.-C., says, "By a quarry I understand a work from which stone or other

⁸ (1822) 1 Shaw. Ap. 225.

⁹ (1855) 3 Drewry, 294.

¹⁰ 13 App. Cas. 657.

¹ (1886) 33 Ch. Div. 562.

² (1879) 4 Ex. Div. 97.

³ Not reported, but referred to in 4 Ex. D. 97.

⁴ 35 & 36 Vict. c. 77.

⁵ (1879) 4 App. Cas. 294.

⁶ (1879) 5 Ex. D. 95.

⁷ (1868) 37 L. J. Ch. (N. S.), p. 127.

material is obtained by excavation from the surface only. Directly you cease to excavate from the surface, and carry on a subterranean work, it is no longer a quarry."

¹¹ "Therefore, I find that the authorities both at law and in equity concur in this, that if the operations carried on are in fact mining operations, and not surface operations, whatever may be the material gained, whether it be slate, as in the present case; limestone, as in *The King v. The Inhabitants of Sedgely*; ¹² or clay, as in *The King v. Brettell*,¹³ the criterion is, not the material obtained, but the mode in which it is obtained."

In *Darvill v. Roper*,⁸ *Kindersley, V.-C.*, said: "Is a mine and a quarry the same thing? According to the ordinary sense of the term mine, does it mean a quarry? I apprehend clearly not. The meaning of the term does not depend on the nature of the fossil body obtained, it depends on the nature of the mode of working it. Some mines may be worked by means of mining, others by means of quarrying, and, upon the case here shown, the limestone was worked by quarrying. . . . That which is worked by mines is by a means of working in which the surface is not disturbed, and when limestone is so worked then it is a limestone mine. It is clear that in the popular, and I think in the just and accurate sense, of the distinction between mines and quarries, the question is, whether you are working so as to remove the surface, including perhaps portions of the lateral surface, so as not to leave a roof. Mining is when you begin only on the surface, and, by sinking shafts, or driving lateral drifts, you are working so that you make a pit or a tunnel, leaving a roof overhead."

In *Bell v. Wilson*,⁹ *Kindersley, V.-C.*, said:—"I cannot entertain the smallest doubt that a mine and a quarry are not the same. . . . A mine, properly speaking, is that mode of working for minerals by diving under the earth, and then working horizontally or laterally; whereas a quarry is where the working is sub dio."

In *Glasgow v. Farie*,¹⁰ *Lord Macnaghten* says at p. 687: "It was admitted that there is no reported case which throws any doubt on the accuracy" of the above language of *Kindersley, V.-C.*¹

In *Denison v. Holiday*,² under a conveyance of "quarries," mines and seams of coal were held not to pass.

¹¹ P. 128.

¹² (1831) 2 B. & Ad. 65.

¹³ (1832) 3 B. & Ad. 424.

⁸ (1855) 3 Drew. 298.

⁹ (1865) 2 Drew. & Sm. 399.

¹⁰ 13 App. Cas. 657.

¹ See also *Attorney-General v. Mylchreest*, (1879) 4 App. Cas., at p. 306.

² (1858) 3 Exch. Rep. (N. S.) 670.

"Metals." In *Earl of Rosse v. Wainman*,³ Parke, B., cites with approval the following extract from Dr. Johnson: "All metals are minerals, but all minerals are not metals."

It has been held, as matter of construction, that duties imposed under the general head of "metals," upon "copper, brass, pewter, and tin, and all other metals not enumerated," would not include the higher metals of gold or silver, which are commonly known as precious metals.³¹

"Ore." In an Australian case Mr. Justice Faucett of the Supreme Court of New South Wales, said: "If, indeed, I may be guided or governed by chemical, metallurgical, or in a wider sense, by scientific writers, I would say that an 'ore' must contain a metal chemically as contra-distinguished from mechanically, combined with some other substances, such as gas or another metal . . . But in my opinion the words in the statute ought to be understood—like the words in any other statute—in the ordinary popular way in which such words are commonly understood. Understood in this way, the word 'ore,' in my opinion, means 'a metal unrefined,' 'a metal in its mineral state,' that is, as taken out of the mine, or, in other words, 'the native compound from which a metal is extracted.'" ⁴

"Surface" is said by Lord Bowen, L.J., in *Pountney v. Clayton*,⁵ to mean "not the mere plane surface, but all the land except the mines."

"Soil" includes the surface and all that is below it down to the centre of the earth.⁶

"Land" includes mines and quarries.⁷

A poor rate was imposed by 43 Eliz. c. 43, on the occupiers of "lands, houses, tithes, and coal mines," and it was held that the mention of one kind of mine indicated that the Legislature intended

³ (1845) 14 M. & W. 372.

³¹ *Casher v. Holmes*, (1831) 2 B. & Ad. 592; per Parke, B.

⁴ *Reg. v. Willson*, (1874) 12 N. S. W. S. C. R. (L.) 253.

⁵ (1883) 11 Q. B. D. 839.

⁶ *Pretty v. Solly* (1859) 26 Beav. 612; *Wakefield v. Buccleuch*, (1866) 4 Eq. 624; *Rolls v. St. George* (*supra*).

⁷ *Newcomen v. Coulson*, (1877) 5 Ch. D. 142-3; *Smith v. G. W. R.*, (1877) 3 App. Cas. 165, 180; *Re Metrop. & Cosh*, (1880) 13 Ch. D. 612; *Errington v. Metrop. R. Co.*, (1882) 19 Ch. D. 568-9; *McDonell v. McKinley*, (1847) 10 Ir. L. R. 514, 521, 524.

that the word "land," which, in law, comprehends all mines, should not include any.⁷¹

"**Tenement**" or "hereditament" includes "mine."⁸

See, as to the construction of mining terms, *Clayton v. Gregson*,⁹ *Houghton v. Gilbert*,¹⁰ *Hutchison v. Bowker*.¹

The meaning of the phrase "mines of minerals" was much discussed in *Shaftesbury v. Wallace*,² where it was held, following *Hext v. Gill*,³ that brick clay was included in a reservation contained in a lease of "all mines of lead ore, tin and other minerals."

⁷¹ *Lead Smelting Co. v. Richardson*, (1762) 3 Burr. 1341; *R. v. Sedgley*, (1831) 2 B. & Ad. 65; *R. v. Cunningham*, (1804) 5 East, 478; *Morgan v. Crawshaw*, (1871) L. R. 5 H. L. 304; *Thursby v. Briercliffe*, (1894) 2 Q. B. 11; (1895) A. C. 32.

⁸ *Dunn v. B. C. Co.*, (1872) L. R.

8 Q. B. 47-8; *Errington v. Metrop. Ry. Co.*, (1882) 19 Ch. D. 568; *Loosemore v. Tiverton, etc., Ry. Co.*, (1882) 22 Ch. D. 43.

⁹ (1836) 5 A. & E. 302.

¹⁰ (1836) 7 Car. & P. 701.

¹ (1839) 5 M. & W. 535.

² (1897) 1 Ir. R. 381.

³ *Supra*.

CHAPTER III.

CONTRACTS.

Parties are allowed the fullest latitude with regard to the subject matter of their contracts. The law requires that there shall be nothing illegal in the consideration, or in the thing which is to be done or omitted. The contract may relate to a past, a present, or a future transaction,¹ and may have reference to any description of property, right or duty.²

Contracts relating to lands, tenements, hereditaments, or any interest in or concerning them, or some memorandum or note thereof, are required by the Statute of Frauds³ to be "in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."⁴

It is not necessary that there should be a formal contract prepared with technical precision. Any memorandum under the hand of the party, made before action brought,⁵ which names, or so describes as to identify, the contracting parties,⁶ and which contains either expressly, or by reference to other written papers, the terms of the agreement, is sufficient; although it be merely a recognition or adoption of a prior written statement of such terms, not signed by the party.⁷

¹ F. N. B. 145a; Plowd. 380a; Com. Dig. Covenant (A.I.).

² Chitty, 13 Ed. 318.

³ 29 Car. 2, c. 3, s. 4.

⁴ See *Shardlow v. Cotterell*, (1881) 20 Ch. D. 90, C. A.; *Studds v. Watson*, (1884) 28 Ch. D. 305.

⁵ *Bill v. Bament*, (1841) 9 M. & W. 36.

⁶ *Vandenbergh v. Spooner*, (1866) L. R. 1 Ex. 316; *Newell v. Radford*, (1867) L. R. 3 C. P. 52; *Sale*

v. Lambert, (1874) L. R. 18 Eq. 1; *Potter v. Duffield*, (1874) L. R. 18 Eq. 4; *Williams v. Jordan*, (1877) 6 Ch. D. 517; *Catling v. King*, (1877) 5 Ch. D. 660, C. A.; *Thomas v. Brown*, (1876) 1 Q. B. D. 714; *Warner v. Willington*, (1856) 25 L. J. Ch. 662; *Jarrett v. Hunter*, (1886) 34 Ch. D. 182; *Coombs v. Wilkes*, (1891) 3 Ch. 77.

⁷ Chitty, 13 Ed. 105; *De Bell v. Thompson*, (1841) 3 Beav. 469.

A memorandum merely expressing a purpose or intention has been held not sufficient;⁸ but a declaration of intention in a deed may amount to a covenant.⁹

Acceptance. It is sufficient if there be an oral acceptance by the person to whom a written proposal, signed by the party to be charged, is made,¹⁰ and likewise if the terms of the contract can be collected from several distinct writings, which refer to each other in such manner as to show that they relate to the same transaction,¹ but the acceptance must be unconditional.

In *McIntyre v. Hood*² the offer of sale was to sell for \$35,000; terms, one-third cash, "balance in one year at 8 per cent. per annum," and the alleged acceptance was, "I beg to accept your offer made this morning. I will accept the property . . . for \$35,000, payable one-third cash on completion of title, and balance in one year at eight per cent.," and it was held not to be a binding, unconditional acceptance, and therefore no completed contract was shown.

Strong, J., says:³ "If there had been a simple acceptance of the defendant's offer, the plaintiff would, of course, have had a right to insist on a good title being shown before completion; this would have been an implied term of the contract, as in every case of an agreement for the sale of real property; but what I hold is, that we cannot imply that such good title was to be shown prior to the payment of one-third of the purchase money, which was to be paid in cash."

Gwynne, J.:⁴ "The objection is not that the introduction of the words 'on completion of title' makes the acceptance defective, but the question is whether the defendant's offer was that he should receive the cash payment on the completion of the title or upon acceptance of the offer."

"Grub Stake" and Prospecting Contracts. An agreement, whereby one undertakes to furnish another with money and supplies to enable him to seek and discover mines, that other agreeing in return to share his successes with the supplier is called "grub-staking," and the contract a "grub stake."

⁸ *Roberts v. Tucker*, (1849) 3 Exch. 632.

⁹ See *Rigby v. G. W. R. Co.*, (1845) 14 M. & W. 811.

¹⁰ *Smith v. Neale*, (1857) 2 C. B. N. S. 67; *Watts v. Alnsworth*, (1862) 1 H. & C. 83; *Reuss v. Pickseley*, (1866) L. R. 1 Ex. 342.

¹ Per Archibald, J., *Pierce v. Coy*, (1874) L. R. 9 Q. B. 210, 218; *Wylson v. Dunn*, (1887) 34 Ch. D. 569.

² (1884) 9 S. C. R. 565.

³ At p. 566.

⁴ P. 577.

If the work is not to be performed within one year the contract should be in writing, otherwise it appears not to be within the Statute of Frauds. All discoveries enure to the benefit of the parties in the proportion fixed by the contract, and if no proportion is fixed the shares will be equal.⁸

The prospector has the right to insist on the supplier performing his part of the agreement, as a condition precedent to participation in discoveries.

Should the prospector, during the term of the contract, locate in his own or another's name, to the exclusion of the supplier, the title would be held in trust for the supplier to the extent of his interest, and no writing is necessary.⁹

The prospector is not permitted to take any unfair advantage of the supplier, and if he does so, will be held to account. The distinction between a grub-stake and a partnership appears to be that the former stops with the acquisition of the property, while the latter provides for development. Under the grub-stake it would seem that neither party has authority to deal with or bind the interest of the other.

Options, Working Bonds, or Executory Contracts. An option or working bond is a contract in writing signed by the owner of the property or his agent, duly authorized, agreeing to accept a certain price therefor as therein specified, usually contemplating entry into possession by the contractee for the purpose of examining and testing the property, with a view to lease or purchase, and during its pendency, usually irrevocable for a period therein stated, securing an exclusive privilege of acquisition, according to the terms of the document.

Such contracts must of course be in writing, and as a matter of discretion should be under seal. In the main they are construed by the rules of law applicable to executory contracts for the sale of ordinary real estate.

Time is generally regarded as of the essence of such agreements, though not so stated, but difficulty will be obviated by a stipulation to that effect.

To secure the right of doing actual mining work on the property there should be a carefully drawn clause inserted. In the absence

⁸ See *Webb v. Montgomery*, (1897) 5 B. C. R. 323.

⁹ See *Rochefoucauld v. Boustead*, (1897) 75 L. T. N. S. 502;

Rose v. Peterkin, (1884) 13 S. C. R. 677; *Webb v. Montgomery*, (1897) 5 B. C. R. 323.

of agreement to the contrary, all minerals won during the option period would belong to the owner of the land.

In *Webb v. Montgomery*,⁷ an agreement for the sale of mineral claims provided for payment by instalments, and contained a proviso that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said vendees can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment, it was held by the Full Court, overruling the Court below, that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay.

Contracts with Companies. Where the power to contract exists, a person contracting with a company need not enquire whether the proper formalities of execution by the company have been complied with in a contract under its corporate seal.⁸

In *Bickford v. Grand Junction Railway Co.*,⁸¹ Mr. Justice Strong, in delivering the judgment of the Court, said: ⁸² "It cannot be successfully contended in the face of many decisions to the contrary, both in England and America, that a statutory corporation is incapable of mortgaging its property, unless its incapacity to do so is either expressly declared, or is to be gathered by implication from the terms of the Act of Incorporation." In other words, no enabling power is requisite to confer the authority to mortgage, but *prima facie* every corporation must be taken to possess it. If its rights in this respect are limited, it must be by force of some disability imposed by the instrument creating it, whether that instrument be a Statute or a Royal Charter; and such a disability may be deduced either from the object of the corporation being limited to certain specific objects, or from its property being subject to charges or trusts in favor of the public with which a mortgage would be inconsistent."

⁷ (1896) 5 B. C. R. 323.

⁸¹ (1877) 1 S. C. R. 696.

⁸ *Sheppard v. Bonanza N. M. Co.*,

⁸² At p. 729.

(1894) 25 O. R. 305.

But if a mortgage is given for any object foreign to or inconsistent with the purposes of the incorporation, no doubt it would be *ultra vires* of the company.⁸³

Where a company has power to acquire land for the purposes of its incorporation, it has power to give a mortgage for and to bind itself by covenant to pay the purchase money.⁸⁴

When the directors of a joint stock company had power under their articles to fix the number of directors which should form a quorum, and by resolution fixed it at three, and subsequently at a meeting at which only two were present, authorized the secretary to affix the company's seal to a mortgage, which was accordingly done by the secretary in the presence of the same two directors, it was held,⁸⁵ as between the company and the mortgagees, who had no notice of the irregularity, that the execution of the deed was valid.⁸²

In *Farrell v. The Carribou Gold Mining Co.*,⁸³ Mr. Justice Townshend, in delivering the judgment of the Supreme Court of Nova Scotia, decided that the defendant company, which was incorporated for mining purposes, to acquire leases, and gold mining rights, to operate them, etc., was, in view of its character, and the objects of its constitution, a trading company, and said: "No exact definition is given as to what distinguishes that class of corporations from others, further than that it must be gathered from its nature."⁸⁴

In this case, at a meeting of the defendant company, a report was received and adopted, authorizing the directors to execute a mortgage, to parties who had agreed to advance the sum of \$30,000, to enable the company to acquire certain mining property, which they desired to purchase, and to include in such mortgage, bonuses amounting in all to \$10,000. The plaintiff, who was one of the

⁸³ *Ib.* p. 733.

⁸⁴ *Sheppard v. The Bonanza N. M. Co.*, (1894) 25 O. R. 305; *Bickford v. Grand Junction R. W. Co.*, (1877) 1 S. C. R. 696; *Long v. Hancock*, (1886) 12 S. C. R. 532, 545; *Shears v. Jacob*, (1866) L. R. 1 C. P. 517; *The Queen v. Sir Charles Reed*, (1880) 5 Q. B. D. 488, per Cotton, L.J.

⁸⁵ Following *Royal British Bank*

v. Turquand, (1856) C. E. & B. 327, and *Mahoney v. East Holford Mining Co.*, (1875) L. R. 7 H. L. 869; see also *In re Hampshire Land Company*, (1896) W. N. 78 (2).

⁸² *County of G. B. v. Rudry Merthyr S. & H. C. C. Co.*, (1895) 1 Ch. 629 (C.A.).

⁸³ (1897) 30 N. S. R. 199.

⁸⁴ See also *General Auction E. & M. Co. v. Smith*, (1891) 3 Ch. 432.

shareholders, objected to the transaction, but it was held that the company, as a trading corporation, could borrow money and secure repayment by mortgage, and, provided the terms upon which the money was borrowed and the mortgage given were not illegal, there could be no objection to paying a bonus for the accommodation obtained, and, considering the speculative character of the property, and the sum advanced, the amount of the bonus was not exorbitant.⁹⁵

Prima facie every corporation having power to hold land, has power to dispose of such land unless such power is expressly or impliedly taken away. The Australian Courts have held that there is nothing in the New South Wales No Liability Companies Act expressly taking away this power, and before the Court can hold that such power is impliedly taken away, it must see very clearly that such an implication necessarily arises from the wording of the Act or the peculiar position of the No Liability Company.¹⁰

Implied Contracts. Where words of recital or reference manifest a clear intention that the parties should do certain acts, an agreement to do those acts will be inferred.¹

But recitals cannot control clear and unambiguous words in the operative part of a contract.²

Where it is necessary in order to give a transaction such efficacy as both parties must have intended it to have, that there should be a continuance of a certain existing state of circumstances, there is implied an obligation not to do anything which would prevent that from being done, and the question whether in any such case an implication ought or ought not to be made must depend on the particular facts of the case.³

An implied warranty, or, as it is called, a covenant in law, as distinguished from an express contract or express warranty, really is in all cases founded on the presumed intention of the parties, and upon reason. The implication which the law draws from what must obviously have been the intention of the parties, is drawn with the

⁹⁵ See also *Potter v. Edwards*, (1857) 26 L. J. (Ch.) N. S. 468.

¹⁰ *Hearn v. Central Broken Hill S. M. Co'y*, (1895) 16 N. S. W. L. R. (E.), 87.

¹ *Knight v. Gravesend W. Co.*, (1857) 2 H. & C. 6.

² *Walsh v. Trevanion*, (1850) 15 Q. B. 733, 751.

³ *Hamlyn v. Wood*, (1891) 2 Q. B. 488; *Stirling v. Maitland*, (1864) 5 B. & S. 840; *Re Railway and Electric Appliances Co.*, (1888) 38 Ch. D. 597; *Rhodes v. Forwood*, (1876) 1 App. Cas. 256; *Telegraph Despatch Co. v. McLean*, (1873) L. R. 8 Ch. 658.

object of giving efficacy to the transaction, and preventing such a failure of consideration as cannot have been within the contemplation of either side, and this appears to be the result of the cases.⁴

Construction of Contracts. It is a general rule of construction in all instruments that where a specific term is used in the first instance it shall receive no extension by a subsequent general term.⁵

Contracts ought to be construed according to the primary and natural meaning of the language in which the contracting parties have chosen to express the terms of their mutual agreement. But there are exceptions to the rule. Lord Watson says, "One of these is to be found in the case where the context affords an interpretation different from the ordinary meaning of the words; and another in the case where their conventional meaning is not the same with their legal sense. In the latter case, the meaning to be attributed to the words of the contract must depend upon the consideration whether, in making it, the parties had or had not the law in their contemplation."⁶

The word "from," though *prima facie* exclusive, may be taken to mean either inclusive or exclusive, according to the context and subject-matter depending on the circumstances of the particular contract.⁷

"On" or "upon" in a contract may mean "simultaneously with," or "before" or "after" the act or event, as appears to be reasonable.⁸

"To" might be held to mean "towards."⁹

"Directly" means "speedily," or "as soon as possible."¹⁰

"Immediately" or "upon demand," imports a reasonable time to act.¹

Consent. A person who makes an offer is considered as continuously making it until he has brought to the knowledge of the person to whom it was made that it is withdrawn or modified.²

⁴ *The Moorcock*, (1889) 14 P. D. 64, per Bowen, L.J., p. 68.

⁵ *Jones v. Thomas*, (1823) 1 B. & C. 719.

⁶ *McCowan v. Balne*, (1891) A. C. 408.

⁷ *S. S. T. Co. v. S. A. A. A.*, (1891) 1 Q. B. 402.

⁸ *Paynter v. James*, (1867) L. R. 2 C. P. 348, 354.

⁹ *Colledge v. Harty*, (1851) 6 Ex. 205.

¹⁰ *Duncan v. Topham*, (1849) 8 C. B. 225.

¹ *Massey v. Sladen*, (1868) L. R. 4 Ex. 13.

² *Adams v. Lindsell*, (1817) 1 B. & Al. 681; *Dunlop v. Higgins*, (1848) 1 H. L. C. 381, 399; *Hains' Case*, (1872) L. R. 7 Ch. 587; *Byrne v. Van Tienhoven*, (1880) 5 C. P. D. 344; *Henthorn v. Fraser*, (1892) 2 Ch. 31.

When negotiations by letter are said to constitute a contract, all correspondence and negotiations should be looked at and considered; and if it appears therefrom that there were terms contemplated by both parties as essential to a contract and no agreement in respect thereof there is no contract.³

Where an offer has been made through the medium of the post, the contract is complete as soon as the acceptance is posted, as the post office is the common agent of both parties.⁴

The general principle established in *Dunlop v. Higgins (supra)*, is said to be limited in its application to cases in which, by general usage, or by reason of the relations between the parties to any particular transactions, or of the terms in which the offer is made, the acceptance of such offer by a letter through the post is expressly or impliedly authorized;⁵ but in *Henthorn v. Fraser*,⁶ Lord Herschell states the rule thus: "Where the circumstances are such that it must have been within the contemplation of the parties that according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted."

Kay, L.J., in the same case, says,⁷ "I would rather express it thus: 'Posting an acceptance of an offer may be sufficient where it can fairly be inferred from the circumstances of the case that the acceptance might be sent by post.'"

The grounds upon which it has been held that the acceptance of an offer is complete when it is posted, have no application to the revocation or modification of an offer.⁸

British and American Telegraph Co. v. Colson,⁹ which decided that if the letter of acceptance, though posted, was never received, the posting might be treated as a nullity, has been overruled by the *Household F. I. Co. v. Grant*,¹⁰ which decided that the acceptance is complete upon the posting of the letter containing the acceptance, though the letter is not received by the person to whom it is addressed.

³ *Hussey v. Horne-Payne*, (1879) 4 App. Cas. 311.

⁴ *Dunlop v. Higgins (supra)*; *Hebb's case*, (1867) L. R. 4 Eq. 12, per Lord Romilly; *Harris' case*, (1872) L. R. 7 Ch. 592; *Halwell v. The Township of Wilmot*, (1897) 24 A. R. 628, which decides that under "The Post Office Act" (Canada), R. S. C. c. 35, s. 43, a letter when

posted becomes the property of the person to whom it is addressed.

⁵ *Household F. & C. A. I. Co. v. Grant*, (1879) 4 Ex. D. 216.

⁶ (*Supra*), Lord Herschell, at p. 33.

⁷ At p. 36.

⁸ *Henthorn v. Fraser (supra)*.

⁹ (1871) L. R. 6 Ex. 108 (sometimes referred to as *Colson's Case*).

¹⁰ (1879) 4 Ex. D. 216.

A contract has been held to be complete on the posting of a letter of acceptance, which failed to reach the offerer owing to a faulty address given by him.¹

The offer must be accepted within a reasonable time; after the lapse of which it is deemed to be withdrawn.²

The offer must be definite, or its acceptance does not constitute a contract.³

Where a memorandum is signed by both parties, but contemplating the preparation and execution subsequently of a formal agreement, it is a question of construction whether they finally agreed to be bound by the terms.⁴

Where the executed memorandum provided that it was to be "subject to the preparation by the vendor's solicitor and completion of a formal contract," it was held that the vendor could not waive that stipulation as being intended for his benefit alone, so as to constitute the rest of the memorandum a final contract enforceable against the purchaser.⁵

Where negotiations were carried on by letter between the parties, whereby all the terms and conditions of a contract between them were settled and assented to, and one of the letters to the plaintiff contained the following words: "An agreement and bond in the terms of your offer will be prepared and submitted to you for execution as soon as the contract for the erection of the building has been awarded"; the contract was awarded, and the bond (viz., as a guarantee for the performance of the agreement) was executed, but no formal agreement was ever executed, it was held that there was a binding agreement between the parties.⁶

In Australia it has been held that the registered holder of a mining claim, although only a trustee for others, can, without the authority of his *cestuis que trustent*, give a valid consent to a portion

¹ *In re The I. L. Co. of M.—Walls' Case*—(1872) L. R. 15 Eq. 18; *Townshend's Case*, (1871) 13 Eq. 148.

² *Ramsgate, etc., v. Montefiore*, (1866) L. R. 1 Ex. 109; *In re Bowron, etc., Bally's Case*, (1868) L. R. 5 Eq. 428.

³ *Taylor v. Brown*, (1813) 1 M. & S. 290.

⁴ *Rossiter v. Miller*, (1878) 3 App. Cas. 1151.

⁵ *Lloyd v. Nowell*, (1895) 2 Ch. 744, distinguishing *Hawksley v. Outram*, (1892) 3 Ch. 359; *Winn v. Bull*, (1877) 7 Ch. D. 29; but see *Bonnewell v. Jenkins*, (1878) 8 Ch. D. 70; *Hawkesworth v. Chaffey*, (1886) 55 L. J. Ch. 335; *Page v. Norfolk*, (1891) 70 L. T. 781.

⁶ *The Koksilah Quarry Company, Limited liability, v. The Queen*, (1897) 5 B. C. R. 525.

of such claim being included in a mining lease; and the consent of the beneficiaries is not necessary.⁵²

Conditions. In Nova Scotia, where an agreement for the sale of lands stipulated that when the land was surveyed the plaintiff should give the defendant a bond for a deed, or a deed on being secured the purchase money, it was held that the survey was not a condition precedent which would prevent the plaintiff from recovering the purchase money.⁵³

In *Grange v. McLennan*,⁷ a promise of sale was made in 1874, whereby D. M., then a minor, was to become the purchaser, with part of the purchase money payable in cash and the balance by instalments, and to have immediate possession and ratify the deed on becoming of age, and to be entitled to a bill of sale, if instalments were paid as they became due; "but if, on the contrary, D. M. fails, neglects or refuses to make such payments when they become due, then said D. M. will forfeit all right he has by these presents to obtain a deed of sale of said herein mentioned farm; and he will, moreover, forfeit all moneys already paid, and which hereafter may be paid, which said moneys will be considered as rent of said farm, and these presents will then be considered as null and void, and the parties will be considered as lessor and lessee."

D. M. did not pay the instalments or ratify the deed, and in 1879 the vendor re-took possession. In 1880 D. M. tendered the balance of the price and claimed the farm, and it was held, reversing the judgment of the Court of Queen's Bench for Lower Canada (appeal side), that the condition precedent on which the promise of sale was made not having been complied with within the time specified in the contract, the contract and law placed the plaintiff *in demeure*, and there was no necessity for any demand, the necessity for a demand being inconsistent with the terms of the contract, which, immediately on the failure of the performance of the condition *ipso facto* changed the relation of the parties from vendor and vendee to lessor and lessee.

Where purchasers agreed to pay a specified sum as purchase money, "and if we get along fairly well we will give you the other \$500 as soon as we are able;" the latter was held a conditional promise which might be recovered on proof that the purchasers were of ability to pay.⁸

⁵² *Band of Hope & Albion Consols v. Young Band Extended Q. M. Co'y*, (1883) 9 V. L. R. (E.) 37.

⁵³ *Morse v. Hueston*, (1859)

Cochran, 61.

¹ (1883) 9 S. C. R. 385.

⁸ *Sylvester v. Murray*, (1895) 26 O. R. 599.

In *Baker v. MacLelland*,⁹ where M. by deed sold to W. the phosphate mining rights of certain land, the deed containing a provision that, "in case the said purchaser in working the said mines should find any other minerals of any kind, he shall have the privilege of buying the same from the said vendor or representatives by paying the price set upon the same by two arbitrators appointed by the parties." W. worked the phosphate mines for five years, and then discontinued it. Two years later he sold his mining rights in the land and by various conveyances they were finally transferred to B., etc.

It was held, affirming the decision of the Court of Queen's Bench, that the option to purchase other minerals could only be exercised in respect to such as were found when actually working the phosphate, which was not the case with the mica as to which B. claimed the option.

The Statute of Frauds,¹⁰ which, as amended, is in force in the whole of Canada except Quebec, enacts that:—

Section 1. "All leases, estates of freehold, or terms of years, or any uncertain¹ interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, made or created by living and seisin only, or by parol and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding."²

Section 2. "Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-thirds, at the least, of the full improved value of the thing demised."

⁹ (1895) 24 S. C. R. 416.

¹⁰ 29 Car. 2, c. 3. The Nova Scotia statute for the "Prevention of Frauds and Perjuries," R. S. of N. S. (5th series) c. 91, expressly extends to all leases, estates or other interests in lands or in mining areas or other mining rights. *Sim v. Sim*, (1890) 22 N. S. R. 185.

¹ That is to say, uncertain as to duration in point of time: *Wood v. Lake*, (1845) 13 M. & W. 838.

² See *Doe Robins v. Warwick and Birmingham Canal Co.*, (1836) 2 Scott, 717; *Earl of Harborough v. Shardlow*, (1840) 7 M. & W. 87.

Section 3. "That no leases, estates, or interests, either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing or by act and operation of law."

Section 4. "No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."³

Sections 5 and 6 relate to the making and revoking of wills, and were repealed by 1 Vict. c. 26, ss. 2, 34.

Section 7. "All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect."⁴

Section 8. "Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or

³ This section extends to an assignment, as well as to interests created *de novo* out of an estate, 1 Vent. 361. Where A., having verbally agreed with B., for the purchase of houses, agreed by writing with C. to sell him the benefit of the bargain for £40, and C. obtained a conveyance, it was held that A. could recover the £40, the transfer of the bargain, though it was one that was not enforceable, being a sufficient

consideration: *Seaman v. Price*, (1825) 10 Moore, 34; see also *Cocking v. Ward*, (1345) 1 C. B. 858; *Kelly v. Webster*, (1852) 12 C. B. 283; *Sanderson v. Graves*, (1875) L. R. 10 Ex. 234.

⁴ See *Rochefoucauld v. Boustead*, (1897) 1 Ch. D. 1896, disapproving *Bartlett v. Pickersgill*, (1759) 1 Eden, 515; *Barton v. McMillan*, (1891) 20 S. C. R. 404; *Bowker v. Laumeister*, (1891) 20 S. C. R. 175.

result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made."

Section 9. "All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect."

Sections 10 and 11 relate to the payment of debts out of trust estates.

Section 12 relates to estates *pur autre vie*, and has been repealed by 1 Vict. c. 26.

Sections 13, 14, 15 and 16 relate to judgments, etc.

Section 17. "No contract for the sale of any goods, wares and merchandises, for the price of ten pounds sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest⁵ to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

Section 18 relates to recognizances.

Sections 19, 20 and 21 relate to nuncupative wills, and were repealed by 1 Vict. c. 26.

Section 22 relates to revocation of wills, and has been repealed by 1 Vict. c. 26.

Section 23 relates to soldiers' and mariners' wills.

Section 24 relates to jurisdiction of the Ecclesiastical Courts.

Section 25 provides that husbands shall not be obliged to distribute the estate of their wives.

"**Land,**" *prima facie*, includes everything under it or over it; everything between the vertical lines produced indefinitely both up-

⁵ See *Blenkensop v. Clayton*, (1817) Taunt. 597. In Ontario section 17 has been extended by R. S. O. (1897) c. 146, s. 9, "to all contracts for the sale of goods of the value of \$40 and upwards, notwithstanding that the goods may be intended to be delivered

at some future time, or may not at the time of the contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

wards and downwards passing through the horizontal boundary to the globe's centre.¹

Cujus est solum ejus est usque ad coelum. (He who possesses land possesses also that which is above it).

This is said by Grove, J.,² to be a maxim of general application, but in *Potts v. Bovine*,³ Armour, C.J., held that the presumption does not apply in all cases and under all circumstances, but may be rebutted.⁴

See, also, *Lord Waterpark v. Fennell*,⁵ where Lord Wensleydale says in reference to the presumption that a demise of land described by superficial metes and bounds carries with it the land to the centre of the earth (p. 684); "this presumption has been rebutted by considering the state of circumstances at the time of the grant, and finding that the lessor has previously demised a cellar to a third person, who was in occupation under that lease at the date of the lease of the surface."⁶ There is, in our opinion, no doubt that in the grant . . . of a seam of coal in the earth, the presumption that the grant extended indefinitely upwards and downwards would be repelled by the nature of the subject matter of the grant, and without any express words in the conveyance."⁷

The surface may be owned by one person, and the subjacent mines and minerals by another. The severance of the title may be effected by statute or by instruments *inter partes*.

For instance, R. S. O. 1897, c. 29, s. 13, provides that gold, silver, copper, lead, iron or other mines or minerals in lands located or sold within the limits of the free grant territory, shall be considered

¹ Co. L. 4 a.

² In *Reg. v. Keyn*, (1876) 2 Ex. D. 116.

³ (1888) 16 O. R. 152, affirmed, (1889) 16 O. R. 191.

⁴ See also *Doe d. Freeland v. Burt*, (1787) 1 T. R. 701; *Fay v. Prentice*, (1845) 1 C. B. 828, per Maule, J.; *Duke of Devonshire v. Pattinson*, (1887) 20 Q. B. D. 263, per Fry, J.

⁵ (1859) 7 H. L. Cas. 650.

⁶ *Doe d. Freeland v. Burt*, (1787) T. R. 701.

⁷ For special cases on the meaning of "land" see *Osborne v. City of Kingston*, (1893) 23 O. R. 382,

where it was held that within the meaning of the word as defined by R. S. O. 1887, c. 202, municipal corporations were not "owners" or "occupants" of the street or highway; *Re Bush and the Comrs. of the Niagara Falls Park*, (1887) 14 A. R. 73, a decision under 48 Vict. (O.) c. 21; "lands, mines, minerals and royalties," *Atty.-Gen. of Ont. v. Mercer*, (1883) 8 App. Cas. 767; (1881) 5 S. C. R. 538; *Thursley v. Briercliffe, etc.*, (1895) A. C. 32; *West Australian Land Co. v. Forrest*, (1894) A. C. 176, P. C.

as reserved from the location and shall be the property of Her Majesty.

From the above it follows that mines and minerals, when not severed from the land, constitute an interest in land within the meaning of the 4th section of the Statute of Frauds. -

The minerals, when physically severed from the land, are goods and chattels within the meaning of the 17th section.

"Tenements" signifies everything that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc.⁸ Lord Coke says,⁹ in describing a tenement, that the word "includes not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exerciseable within the same, though they lie not in tenure."¹⁰

"Hereditaments" are every kind of property that can be inherited; i.e., not only property which a person has by descent from his ancestors, but also that which he has by purchase, because his heir can inherit it from him. The two kinds of hereditaments are corporeal, which are tangible, and incorporeal which are not tangible, and are the rights and profits annexed to, or issuing out of land. Although the word "hereditament" applies both to realty and personalty, yet it is in a different mode of relation. When applied to realty, it generally denotes the subject of property, apart from its nature and extent; but when applied to personalty, it does not then denote the subject, but signifies some inheritable right of which the subject is susceptible. A third application of this word is used to denote inheritable rights relating to land, or something issuing therefrom or exerciseable therein, or having some local connection or relation distinct from the enjoyment of the land itself. In this view of the description, hereditaments divide themselves into real, personal, and mixed, and, therefore, as was said before, they are applicable to all the kinds of property.¹

⁸ 2 Bl. Com. 16.

⁹ Co. Litt. 20 a.

¹⁰ For distinction between land and tenements, see *Electric Telegraph Co. v. Salford*, (1855) 11 Exch. 189, per Martin, B.

¹ Fearn's Reading on the Stat. of Inrolments. See *Metropolitan Railway Co. v. Fowler*, (1893) App. Cas. 416; where it was held that a railway tunnel was a "hereditament" within the meaning of 38 Geo. III. c. 5, s. 4.

Contract of Purchase. "The right to call for a conveyance of the land is an equitable interest or equitable estate. In the ordinary case of a contract for purchase there is no doubt about this, and an option (in this case unlimited in point of time) for re-purchase is not different in its nature. A person exercising the option has to do two things, he has to give notice of his intention to purchase, and to pay the purchase money; but as far as the man who is liable to convey is concerned, his estate or interest is taken away from him without his consent, and the right to take it away being vested in another, the covenant giving the option must give that other an interest in the land.²

Osler, J.A., says, in *Re Flatt & Prescott & Russell*,³ after reviewing the authorities, " . . . the interest of the purchaser until he is entitled to call for the conveyance, is properly an equity or equitable right rather than an equitable estate."

Sufficiency of Signature. If the contract be signed by the party to be charged, or by his agent authorized to sign the memorandum as a record of the transaction,⁴ that is sufficient without its being signed by the other party.⁵ Oral authorization of the agent is sufficient under sections 4 and 17,⁶ but not under sections 1 and 3. Signatures have been held to be sufficient as follows: (1) by pencil;⁷ (2) instructions for a telegraphic message;⁸ (3) by mark;⁹ (4) by initials.¹⁰ The agent cannot be one of the contracting parties, but must be a third person.¹ A broker² or an auctioneer³ may be agent for both parties.⁴ The statute has been said not to apply to deeds,

² Per Jessel, M.R., in *London & S. W. R. Co. v. Gorman*, (1882) 20 Ch. D. 581, overruling *Birmingham Canal Co. v. Cartwright*, (1879) 11 Ch. D. 421. For definition of "a perpetuity" see *ib.*, p. 581.

³ (1890) 18 A. R. 1, at p. 17.

⁴ See *Smith v. Webster*, (1876) 3 Ch. D. 49, C. A.

⁵ *Laythorpe v. Bryant*, (1836) 3 Scott, 238.

⁶ *Graham v. Musson*, (1834) 7 Scott, 769.

⁷ *Geary v. Physic*, (1826) 5 B. & C. 234.

⁸ *Godwin v. Francis*, (1870) L. R. 5 C. P. 295.

⁹ See *Baker v. Denning*, (1833) 3 A. & E. 94; *Dyas v. Stafford*, (1851) 7 L. R. Ir. 590.

¹⁰ See *Phillimore v. Barry*, (1818) 1 Campb. 513; *Chichester v. Cobb*, (1866) 14 L. T. 433; *Kennedy v. Oldham*, (1888) 15 O. R. 433, Q. B. D.

¹ *Farebrother v. Simmonds*, (1822) 5 B. & Ald. 333; *Sharman v. Brandt*, (1871) L. R. 6 Q. B. 720, Ex. Ch.

² *Parton v. Crafts*, (1864) 10 B. N. S. 11.

³ *Bartlett v. Purnell*, (1836) 3 A. & E. 792.

⁴ *Murphy v. Boese*, (1875) L. R. 10 Ex. 126.

but only to parol agreements,⁵ but a sheriff is not, under R. S. O. c. 124, agent for the purchaser to sign for him.⁶ Where the offer contains the names of both contracting parties (though one is only agent of an undisclosed vendor), there is a contract sufficient within the statute.⁷

As to contract not signed by the vendor, but subsequently admitted by his letters, see *O'Donohoe v. Stammers*.⁸

"Vendee" is not a sufficient description of the party selling; to satisfy the requirements of the statute,⁹ neither is "landlord."¹⁰

"Proprietor" has been held sufficient.¹ Where the vendor was described as "a trustee selling under a trust for sale," the contract was held sufficient.² "The company" was held sufficient when it appeared that one particular company was in actual occupation;³ also "executor" of a person named in the contract.⁴

Part Performance. Although the Statute of Frauds requires the transfer of an interest in lands to be made in writing, the parol agreement for the sale or transfer having been partly performed, is enforceable in equity.⁵

The above is an illustration of the general principle that part performance of a contract takes a case out of the Statute of Frauds. The part performance must, however, be exclusively and unequivocally referable to the contract in question.

In *Caddick v. Skidmore*,⁶ Lord Chancellor Cranworth held that an agreement between the lessee of a mine and another to become partners in the mine, paying the reserved rent, subletting the mine at a royalty and dividing the profits, was within the Statute of Frauds, and not sufficiently proved by a receipt signed by the lessee and given to the other for a sum as that other's share of the head rent of the mine, the sum being exactly half of that rent.

It is to be observed that the defendant was, before the alleged contract in question, the lessee of the mine. If the lease had been

⁵ *Cherry v. Heming*, (1849) 4 Exch. 636, per Alderson, B.

⁶ *McIntyre v. Faubert*, (1895) 26 O. R. 427.

⁷ *Filby v. Hounsell*, (1896) 2 Ch. 737.

⁸ (1884) 11 S. C. R. 358.

⁹ *Wilmot v. Stalker*, (1882) 2 O. R. 78.

¹⁰ *Coombs v. Wilkes*, (1891) 3 Ch. 77.

¹ *Sale v. Lambert*, (1874) L. R. 18 Eq. 1; *Rossiter v. Miller*, (1874)

3 App. Cas. 1124.

² *Catling v. King*, (1877) 5 Ch. D. 660.

³ *Commins v. Scott*, (1875) L. R. 20 Eq. 11.

⁴ *Hood v. Lord Barington*, (1868) L. R. 6 Eq. 218.

⁵ *Mahon v. McCully*, 1 N. S. D. 323.

⁶ (1857) 2 De G. & J. 52.

obtained for the benefit of the partnership, the existence of such partnership might have been proved by parol.

Partnership. In *Dale v. Hamilton*,⁷ it was held that a partnership for the purpose of buying, improving and selling land might be proved without a writing under the Statute of Frauds. At page 383, the Vice-Chancellor says, "the plaintiff contends that where a partnership exists between two persons, and land is acquired by the partnership as a substratum for such partnership, the land is in the nature of the stock in trade of the partnership; and that the partnership being proved as an independent fact, the Court, without regarding the Statute of Frauds, will inquire of what the partnership stock consisted, whether it be of land or of property of any other nature. That land acquired as the substratum of a partnership is, in this Court, considered in the light which the plaintiff contends for, may be admitted upon very high authority (*Crawshay v. Maule*,⁸ *Fereday v. Wightwick* ⁹), and that where a partnership exists, and land is brought into, and actually held and used by the partnership for partnership purposes, the Court has dealt with it as partnership property, although the ownership, apparently, has not been in all the members of the firm, or, if in all, not apparently as partners, but under another title; and that the Court has so done, without calling in aid the doctrine of part performance, must, I think, be also admitted."

It follows that a partnership for the purpose of speculating in mining properties, or in mining claims, may be proved by parol evidence,¹⁰ although a contract which affects the ownership of land is required to be in writing.¹¹

In *Watson v. Spratley*¹⁰ it was held that a share in a joint-stock mining company, whether incorporated or unincorporated, is not goods, wares or merchandise within the 17th section of the Statute of Frauds,¹⁰¹ nor an interest in land within the meaning of the 4th section. See also *Hilton v. Gerand*, 1 DeG. & S. 187.

In *Cheadle v. Proctor*,¹ P. and others were partners in working a colliery, of which they were lessees, under an agreement for a

⁷ (1846) 5 Han. 369.

⁸ (1818) 1 Swanst. 518.

⁹ (1829) 1 Russ. & Myl. 45.

¹⁰ *Essex v. Essex*, (1855) 20 Beav. 142.

¹⁰¹ *Caddick v. Skidmore*, (1857) 2 De G. & J. 52.

¹⁰ (1854) 10 Exch. Rep. 222.

¹⁰¹ See *Bligh v. Brent*, (1837) 2 Y. & C. 294; and *Duncroft v. Albrecht*, (1841) 12 Sim. 189.

¹ (1863) 19 L. T. N. S. 289.

lease from the freeholder, and of which P. was manager. An agreement was made by all the partners that P. should retire from all connection with the partnership and be paid £60 "for any interest he might have, and for his services rendered in working the colliery. Held, that P.'s interest in the colliery was not an interest in or concerning land within the meaning of the 4th section of the Statute of Frauds. Kelly, C.B., saying ² that P. "had no interest, legal or equitable, in the land of the colliery."

In *Burn v. Strong*,³ the facts were, that a partnership was formed between three persons, A., B. and C., to dig for gold on the property of one Allen. Two of them, A. and B., were to do the work, and the third, C., was to pay the expenses; all three were to share in the profits. The place named was afterwards abandoned by mutual consent, and the two working partners, A. and B., removed, at the instance of the third, C., to a lot in another township, Elzevir, where they resumed work, C. paying the expenses as before.

Held, in the absence of any express agreement, it was to be presumed that they were working on the same terms as at the place originally named. The plaintiff had occasion to leave the work on the 2nd March, and did not return. He filed a bill to enforce his partnership rights on the 30th July.

Held, that as there was no stipulation respecting the time he was to work, and he was not requested to resume work, and no notice was given him of any complaint or intention to exclude him from the profits of the adventure, the delay did not bar the suit.

C., in his own name, bought the privilege of digging for gold on the Elzevir lot, and subsequently formed a company by which that lot was purchased.

It was held, that the plaintiff, one of the working partners, was entitled to a share of all the profits and advantages made by C. in this transaction. There was no writing signed by C. acknowledging the agency and trust, but it was held that A. and B., having entered and worked on the lot, the Statute of Frauds did not apply, and in giving judgment, Mowat, V.C., said: "In addition to the grounds of defence to which I have already adverted, the defendants set up the Statute of Frauds. In *Foster v. Hale*,⁴ and *Dale v. Hamilton*, before Vice-Chancellor Sir James Wigram,⁵ it was held that an agree-

² At p. 291.

³ (1868) 14 Gr. 651.

⁴ (1800) 5 Ves. 309.

⁵ 5 H. 369; see also *Essex v. Essex*, (1855) 20 Beav. 449, and head note *Cowell v. Watts*, H. & Tw. 224.

ment for a partnership in land was not within the statute.⁶ The authority of *Dale v. Hamilton*, before the Vice-Chancellor, is somewhat shaken by what occurred on the appeal⁷ to the Lord Chancellor, and by the subsequent case of *Caddick v. Skidmore*;⁸ but here the agreement was acted upon by the plaintiffs entering and working on the land, acts which take the case of even an ordinary purchaser out of the Statute on the ground of part performance. So new leases obtained by a partner of premises theretofore occupied by the partnership have been held to inure for the benefit of the partnership without any writing acknowledging a trust, though the partners obtaining the renewal had previously given to the other partners notice of dissolution, and of their intention to renew the old lease for their own benefit.⁹

¹⁰ "It was further argued that the agreement was not sufficiently detailed or definite to found a suit upon. The agreement is certainly not so indefinite as to be entirely void, but no doubt a contract, though valid at law, may be in some respects so vague that the Court may have no reasonable assurance that the decree asked for would be in accordance with the true intent and meaning of the parties; and it may therefore be necessary to refuse a specific performance," etc.

¹¹ "Viewing the three as partners, it follows inevitably that this benefit cannot be appropriated by Strong for himself. I presume that the transaction was known to the other defendants at the time and acquiesced in. At all events, they make no claim to share this sum."

In *Stuart v. Mott*,¹ the facts were that S. brought a suit for performance of an alleged verbal agreement by M. to give him one-eighth of an interest in his, M.'s, interest in a gold mine, but failed to recover, as the Court held the alleged agreement to be within the Statute of Frauds. On the hearing, M. denied the agreement as alleged, but admitted that he had agreed to give S. one-eighth of his interest in the proceeds of the mine when sold, and it having been afterwards sold, S. brought another action for payment of such share of the proceeds.

⁶ Statute of Frauds.

⁷ (1847) 2 Ph. 266.

⁸ (1857) 2 DeG. & J. 52; see also *Smith v. Matthews*, (1861) 3 DeG. F. & J. 151.

⁹ See cases cited in note at p.

657; see also *Hamilton v. Hamilton*, (1873) Russell's Equity Decisions of Nova Scotia, 78.

¹⁰ Page 658.

¹¹ Page 659.

¹ (1893) 23 S. C. R. 384.

It was decided, reversing the decision of the Supreme Court of Nova Scotia, Fournier and Taschereau dissenting, that S. was not estopped by the first judgment against him from bringing another action, and also that the contract for a share of the proceeds was not one for the sale of an interest in land within the Statute of Frauds.

Strong, C.J.,² says: Then it was said that the Statute of Frauds was a defence. The answer to this is that the agreement, which is now sought to be enforced, was not, as in the former case,³ one concerning an interest in land, but exclusively relating to an interest in money; it is true this money is to arise from the sale of land or of a mining interest, but that on authority can, I conceive, make no difference after the land or money interest has been actually sold. It is not sought to enforce any trust or contract to sell land. That would have been a different case. Here the sale has taken place, and the only question is as to the share of the price received.

In an Australian case, P. was a sleeping partner with M. in a block claim, and M. worked it for himself and P. on certain terms as to the division of the profits. M., while working the claim, discovered another reef, and took out a claim on it for himself under a regulation which provided "That any party working in a claim shall be entitled to an area of ground, provided such paying reef be not within 40 feet of the edge of the gutter." Held, that P. had no interest in the new claim, as it was intended to be the reward of labour; and that the new claim had nothing to do with the partnership subsisting in the other claim.⁴¹

It has been held that under "The New Zealand Partnership Act," 1891, section 36 of which provides, that every partnership is dissolved by the death or bankruptcy of any partner, does not apply to mining partnerships. In the same case, the difference between ordinary and mining partnership is discussed.⁴²

An agreement to the effect that the object of a venture should be to extract gold from auriferous earth within the limits of the claim, and after payment of expenses to divide the profit (if any) among the holders, was held by the Supreme Court of New Zealand not to constitute them partners with respect to the gold only, and joint tenants with respect to the mine itself.⁴³

² At p. 388.

³ (1887) 14 S. C. R. 734.

⁴¹ *Perry v. Morton*, (1868) A. R. 26th November.

⁴² *Stuart v. Nelson*, (1895) 15 N.

Z. L. R. 637.

⁴³ *Gallagher v. Talty*, (1888) 7 N. Z. L. R. 35.

Trust. In *Wells v. Petty*,⁴ the plaintiff having discovered "mineral float," acquainted the defendant of the fact, and disclosed the locality on a verbal promise by defendant that plaintiff should be "in on it" if defendant should thereby succeed in discovering the ledge and locating a mineral claim. Within three days afterwards defendant found a ledge in the vicinity indicated by plaintiff, and located and recorded the ledge in his own name, but refused to give the plaintiff any interest and set up the Statute of Frauds. The Full Court decided that the words "to be in on it" mean an interest of some measure, and that the maxim "equality is equity" supplies the measure when there is no evidence showing that less than an equal share was stipulated for or intended.⁷

As to the plea of the Statute of Frauds, *Davie, C.J.*,⁸ says, "If that Statute is to be held applicable to transactions governed by the Mineral Act, I should agree with the learned trial Judge that the plaintiff's action fails were it not for the case of *Rochevoucauld v. Boustead*,"⁹ overruling *Bartlett v. Pickersgill*,¹⁰ and proceeding "upon the principle laid down in *McCormick v. Grogan*,¹ *Rose v. Peterkin*,² and other cases, that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it to have been so conveyed, to deny the trust and claim the land, and that, consequently, notwithstanding the Statute of Frauds, it is competent for a person claiming land conveyed to another, to prove by parol evidence that it was so conveyed upon trust, and that the grantee, knowing the facts, is denying the trust. I can see no reason why, so far as the Statute of Frauds is concerned, the same principle is not applicable to the location of a mining claim held, or partly held, in trust. The provisions of the B. C. Mineral Act are not pleaded. It may be a serious question whether, or how far, the provisions of the Mineral Act, so far as relates to rights governed by the Mineral Act supersede or displace the Statute of Frauds. That question, however, does not arise here, for the reason, as before remarked, that the Mineral Act is not pleaded, and I take it, could not, any more than the Statute of Frauds, be relied upon to defeat a parol agreement unless pleaded.²¹ As further answering the Statute of Frauds,

⁴ (1897) 5 B. C. R. 353.

⁷ Following on this point *Robinson v. Anderson*, (1855) 7 DeG. M. & G. 239; (1855) 20 Beav. 98.

⁸ At p. 355.

⁹ (1896) 75 L. T. N. S. 502.

¹⁰ 1 R. R. 1.

¹ (1869) 4 H. of L. 97.

² (1885) 13 S. C. R. 706.

²¹ *James v. Smith*, (1891) 1 Ch.

and as pointed out by McCreight, J., the position of the plaintiff, apart from his statutable rights and liabilities as a free miner, would be merely that of a licensee of the Crown, having no title whatever to land, and consequently no interest to be defeated by the Statute of Frauds."

McCreight, J., referred to *Wood v. Leadbitter*,³ to show that plaintiff "as a licensee of the Crown, authorized by the Lieutenant-Governor to mine for gold on Crown lands," would have "a mere revocable license, and that upon revocation he would have had no rights whatever," and decided that the sections of the Statute of Frauds dealing with interests in land have no application."

In *Rochevoucauld v. Boustead*,⁴ Lindley, L.J., for the Court,⁵ said, at p. 205: "This conclusion renders it necessary to consider whether the Statute of Frauds affords a defence to the plaintiff's claim. The section relied upon is section 7, which has been judicially interpreted in *Forster v. Hale*,⁶ and *Smith v. Matthews*.⁷ According to these authorities, it is necessary to prove by some writing or writings signed by the defendant, not only that the conveyance to him was subject to some trust, but also what that trust was. But it is not necessary that the trust should have been declared by such a writing in the first instance; it is sufficient if the trust can be proved by some writing signed by the defendant, and the date of the writing is immaterial. It is further established by a series of cases, the propriety of which cannot now be questioned, that the Statute of Frauds does not prevent the proof of a fraud; and that it is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the Statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the Statute, in order to keep the land to himself."

See also *Barton v. McMillan*,⁷¹ where it was held, following *James, L.J.*, in *Haigh v. Kays*,⁸ that parol evidence was admissible.

In this case it was argued by very learned counsel for the plain-

³ (1845) 13 M. & W. 838.

⁴ 75 L. T. N. S. 502, (1897) 1 Ch. Div. 196.

⁵ Lord Halsbury, L.C., and Lindley and A. S. Smith, L.JJ.

⁶ (1798) 3 Ves. 696.

⁷ (1861) 3 D. F. & J. 139.

⁷¹ (1891) 20 S. C. R. 404.

⁸ (1872) 7 Ch. 469.

tiff, that the authorities on the point,⁸¹ established the principle that where it is sought to establish a trust the Statute of Frauds requires evidence in writing signed by the party to be charged where the trust arises from contract, but not where it arises from conduct.

A broker, employed by his principal to purchase certain shares in a mining company, informed him, contrary to the fact, that he had purchased such shares in accordance with instructions. He did not buy until two days later, and he then purchased for forward delivery. Held, in an action by the broker to recover commission, that the representation that he had bought put an end to his authority, and that the principal was not bound by the subsequent purchase.⁸²

Plaintiff, the proprietor of a gold mine, entered into an agreement with defendants, quartz crushers, to crush the quartz for £25 every week, and it was also agreed that the plaintiff should have the right to remove all amalgam from the batteries. The plaintiff, after some time had elapsed, finding some of the gold had attached itself to the plates used in the amalgamating process, claimed a right to remove it, which defendants refused on the ground that their plates might be injured; and also on the ground that there was a custom that the gold adhering to the plates became the property of the owners of the crushing machine. Held, that the gold had always remained the property of the plaintiff. Per Windeyer, J., "The plaintiff has the right to get the gold in the best way he can, and if he injures the plates he must compensate the defendants for such injury."⁸³

Plaintiff, a share broker and member of the Stock Exchange, brought an action against the defendant for refusing to accept one hundred Nevada silver shares. It appeared that on 7th September, the defendant instructed the plaintiff to purchase for him 100 Nevada shares, to be delivered and paid for on 7th December. Plaintiff purchased the shares, and sent to the defendant a sale-note, "subject to the rules and regulations of the Stock Exchange," for 100 shares, "£1 per share paid up." The defendant endorsed the sale-note as accepted, and returned it to the plaintiff. On December 7th the plaintiff tendered to the defendant the scrip of 100 Nevada shares issued under the seal of the company as paid up to £1 per share. The evidence showed that these were the only Nevada shares known in the market. The defendant refused to accept the shares

⁸¹ For which see *ib.*, p. 201.

⁸² *Patterson v. Strauss G. M. Co.*,

⁸³ *Samper v. Hade*, (1889) 10 N. S. W. L. R. (L.) 270.

(1889) 5 N. S. W. W. N. 154.

on the ground that they were not as a matter of fact paid up to £1, and no contract to treat them as so paid up had been filed in accordance with section 57 of the Companies Act. Neither the plaintiff nor the defendant knew of that fact on 7th September. The District Court Judge, before whom the action was tried, received in evidence a copy of Rule 22 of the Stock Exchange, under which a member is disentitled to plead agency in an action brought by the seller for the price of shares sold. The only evidence of knowledge by the defendant of the rules of the Stock Exchange was that he had previously bought stock. Verdict for plaintiff. On appeal the questions for the opinion of the Supreme Court were: (1) Was the Judge right in receiving in evidence the rules of the Stock Exchange? (2) Was he right in finding a verdict for the plaintiff? Held, that the verdict was right. The scrip tendered was the only Nevada scrip known in the market, and that was what the plaintiff was instructed to buy for the defendant. Held, further, that the copy of the rules of the Stock Exchange was rightly received in evidence. The defendant, having authorized the plaintiff to buy on the Stock Exchange, is bound by such rules.⁹

Fixtures. It is commonly said that fixtures are not an interest in land within the meaning of the Statute of Frauds, so as to require a note or memorandum in writing under the 4th section, upon the authority of *Hallen v. Runder*,¹⁰ since followed in *Lee v. Gaskell*,¹ where it was decided that the term "fixtures" denoted personal chattels to which is incident the "tenant's right to remove," and therefore a contract to forego that right was not an interest within the Statute.

Covenants. The term covenant is properly applied to denote a contract under seal.²

If the principal thing to be performed, as the conveying of an estate or the granting of a lease, be void, further covenants which are relative and dependent thereon are so likewise.³

Where covenants are independent, a covenantor cannot discharge himself by showing that no estate passed.⁴

⁹ *Palmer v. Upward*, (1886) 7 N. S. W. L. R. (L.) 296.

¹⁰ (1834) 1 C. M. & R. 266.

¹ (1876) 1 Q. B. Div. 700.

² Chitty, 13 Ed.

³ *Bacon Abr. Cov. (G)*.

⁴ *Mouys v. Leake*, (1799) 8 T. R. 411, approved by Lord Ellenborough, (1807) 8 East, 234; see *McDonald v. Murray*, (1885) 11 A. R. 101; *Armstrong v. Auger*, (1891) 21 O. R. 98.

Where the effect of a contract is to give a stranger to it a beneficial right thereunder, he may enforce such right by action, though not named as covenantor.⁵

It is established that no stranger to the consideration can take advantage of a contract, although made for his benefit.⁶

To entitle a person to claim the rights of a *cestui que trust*, something more is necessary than that he should show himself entitled to a benefit under the instrument. He must show that the circumstances are such as to give him a vested right which the other parties to the contract could not terminate without his consent.⁷

For instance, one mine owner can not enforce or take advantage of a covenant by a lessee with his lessor in a lease of an adjoining mine.⁸

In a covenant to indemnify and save harmless a person from all liability of every nature and kind, the obligee has a cause of action as soon as judgment is recovered against him and before he pays it.⁹

A covenant by the purchaser of the equity of redemption, with the mortgagor to pay off the mortgage debt, is assignable by the mortgagor to the mortgagee, so as to enable the latter to enforce it for his own benefit.¹⁰

A covenant personal to the covenantor is, of course, not assignable.¹¹

In every case where the testator is bound by an express covenant the executor shall be bound by it, except where it was to be performed by the person of the testator, or is determined by his death.¹²

In *Loucks v. Wallbridge*,³¹ the plaintiff, having discovered mines upon certain lands, agreed with D. and T. that they should furnish

⁵ *Moot v. Gibson*, (1891) 21 O. R. 248.

⁶ *Tweddle v. Atkinson*, (1861) 1 B. & S. 393, per Wightman, J.; see and compare *Gandy v. Gandy*, (1884) 30 Ch. D. 57; *In re Orr Ewing*, *Orr Ewing v. Orr Ewing*, (1882) 22 Ch. D. 456; *Osborne v. Henderson*, (1889) 18 S. C. R. 698, reversing *Henderson v. Killey*, (1889) 17 A. R. 458.

⁷ *Faulkner v. Faulkner*, (1893) 23 O. R. 258, per Street, J.

⁸ *Wilson v. Waddell*, (1876) 2 App. Cas. 95.

⁹ *Mewburn v. Mackelcan*, (1892) 19 A. R. 729; cf. *Wolmershausen v. Gullick*, (1893) 2 Chy. 514; *Boyd v. Robinson*, (1891) 20 O. R. 404.

¹⁰ *Campbell v. Morrison*, (1897) 24 A. R. 224; in appeal *sub nomine*; *Maloney v. Campbell*, (1897) S. C. R. (not yet reported); *British Canad. Loan Co. v. Tear*, (1893) 23 O. R. 664.

¹¹ *Sutherland v. Webster*, (1894) 21 A. R. 240.

¹² *Bally v. Wells*, (1769) 3 Wills. 29. *Wms. on Executors* (9th Ed.) 1629-30.

³¹ (1873) 31 U. C. Q. B. 32.

the funds to work the mines, and after securing the title convey an undivided third to himself. He afterwards agreed to assign his interest in this agreement to the defendant in consideration of \$100, and one-half of whatever profit might be derived from the share agreed to be given to him by D. and T., and the defendant agreed to account for and pay over to him one-half of whatever profits or returns might be derived from the said share assigned to the defendant as agreed to be given to the plaintiff by D. and T. And further, it was agreed that the plaintiff should not have to pay or advance any moneys or labour in the working of the said mines. The defendant having sold one-half of his share to one G. for \$1,125, held, that this money was not profits or returns derived from the defendant's share for which he was bound to account to the plaintiff under his agreement.

Morrison, J. (37): The view taken by the learned Judge at the trial was the correct one, namely, that the defendant sold to Gilbert only one-half of the one-third share, and transferred to him the liability to account to the plaintiff for half the profits that might arise from such share of these mining lands. In other words, the defendant sold merely half of his own beneficial share in the lands, and that the moneys he received on such sale were not moneys within the meaning of the covenant declared on.

Joint, Several and Joint and Several Covenants.

Where more persons than one enter into a covenant, and each undertakes only to the extent of his own acts and defaults, the covenant is said to be several, and when covenants are several "they are as several deeds written on one and the same piece of parchment."⁴

A covenant may also be entered into with two or more covenantees severally.⁵

In a joint covenant each covenantor becomes answerable for himself, and also for the due performance of the covenant by another.

A covenant with "two" and "every of them" is joint, though the two are several parties to the deed.⁶

A covenant will not be construed as joint and several unless distinctly expressed so to be in the deed itself.⁷

⁴ Mathewson's Case, (1597) 5 Co. Rep. 23a.

⁵ Servante v. James, (1829) 10 B. & C. 410.

⁶ Southcote v. Hoare, (1810) 3 Taunt. 87.

⁷ Summer v. Powell, (1816) 2 Mer. 30, p. 37; (1823) T. & R. 423.

A joint and several covenant has been created by the use of the words covenant "for themselves and each of them."⁸

A covenant by two or more persons "for ourselves and each of us," or "for ourselves and every of us," is joint and several.⁸¹

Implied Covenants. Where words of recital or reference manifested a clear intention that the parties should do certain acts, the Courts have from these inferred a covenant to do such acts, and sustained actions of covenant for the non-performance as if the instruments had contained express covenants to perform them.⁸²

The distinction between covenants implied by operation of law and express covenants is that express covenants are taken more strictly. A party may without consideration enter into an express covenant.⁸³

A covenant is implied by a grantor or assignor to do nothing in derogation of his deed.⁹

A covenant to "leave a barrier or partition," etc., and to "leave sufficient walls or pillars for the support of the roof," etc., was held by Bacon, V.C., in *Mostyn v. Lancaster*,⁹¹ to mean that, "At the end or determination they are to leave, that is, must not in the meantime take out, because 'to leave' does not assume that there will be any power to take out pillars and afterwards to restore them. It is a grant of the mines except only the pillars."

A covenant, being part of a deed, is subject to the general rules established for the construction of deeds, as,

- (1) To be always taken most strongly against the covenantor, and in favour of the covenantee.
- (2) To be taken according to the intent of the parties.
- (3) To be construed *ut res magis valeat quam pereat*.
- (4) When no time is limited for its performance it must be done within a reasonable time.¹⁰

A covenantee who has not executed a deed can sue on covenants contained in it.¹

⁸ *Robinson v. Walker*, (1795) 1 Salk. 393.

⁸¹ *Bolton v. Lee*, (1673) 2 Lev. 56; *May v. Woodward*, (1677) 1 Freem. 248.

⁸² Per Lord Denman, in *Aspdin v. Austin*, (1844) 5 Q. B. 671, p. 683; see *Page v. Midland Ry.*, (1893) 42 W. R. 116.

⁸³ Per Lord Mansfield, *Shubrick v. Salmond*, (1765) 3 Burr. 1639.

⁹ *Gerard v. Lewis*, (1867) L. R. 2 C. P. 305.

⁹¹ (1883) 23 Ch. D. 600.

¹⁰ 4 Cru. Dig. 369.

¹ *Vernon v. Jefferys*, (1795) 2 Stra. 1146; *Morgan v. Pike*, (1854) 14 C. B. 473.

In Ontario, certain covenants are deemed to be included and implied in conveyances made on or after the first day of July, 1886.²

Where a person contracts to do a certain thing, a negative contract may be implied.³

Restrictive Covenants. In *Fothergill v. Rowland*,⁴ Jessel, M.R., held, on demurrer, that the Court had no jurisdiction to grant an injunction to restrain the breach of a contract by a lessee of a colliery to raise and deliver to the plaintiff all the get of coals in the colliery at a fixed price for five years, and who thereafter agreed for the sale of the colliery to other parties.⁵

In *Keppel v. Bailey*,⁶ Lord Brougham, L.C., decided that a covenant by lessees for themselves, their heirs, executors, administrators and assigns, with the owners of a quarry to procure all limestone used at lessees' works from that quarry, etc., (1) did not run with the land so as to bind assignees at law,⁶¹ and (2) that a Court of Equity would not by holding the conscience of the purchaser who had notice, to be affected by the notice, give the covenant a more extensive operation than the law allowed it, but the latter proposition cannot now be upheld.⁷

So far as *Keppel v. Bailey* decides that a restrictive covenant as to the use of land, which does not run with the land at law, is not binding in equity upon an assignee with notice, it has been overruled by more recent cases.⁸ And in equity a person who takes land with notice of a restrictive covenant, whether actual or constructive,⁹ will be bound by it, unless the covenant has been waived, e.g., by acqui-

² R. S. O. 1897, c. 119, s. 17.

³ *De Mattos v. Gibson*, (1859) 4 De G. & J. 276, overruling *Hills v. Croll*, (1846) 2 Ph. 60; *Sevin v. Deslandes*, (1861) 9 W. R. 218; *Le-Blanch v. Granger*, (1866) 35 Beav. 187; *Catt v. Tourle*, (1869) L. R. 4 Ch. 654; *Holmes v. Eastern Counties Railway Company*, (1857) 3 K. & J. 675.

⁴ (1873) L. R. 17 Eq. 132.

⁵ See also *Ryan v. Mutual Tontine W. C. A.*, (1893) 1 Ch. 116, 127; and *Keith v. National Telephone Co.*, (1894) 2 Ch. 153; per *Kekewich, J.*, *Heathcote v. North S. R. Co.*, (1859) 2 Mac. & G. 100.

⁶ (1834) 2 My. & K. 517.

⁶¹ See *Limmer Asphalte Co. v. Com. of Inland Revenue*, (1872) L. R. 7 Exch. 216.

⁷ See *Catt v. Tourle*, (1869) L. R. 4 Ch. 654; *De Mattos v. Gibson*, (1859) 4 De G. & J. 276, 282, per Lord Justice Knight Bruce; *Wilson v. Hart*, (1866) L. R. 1 Ch. 463; *Earl of Zetland v. Hislop*, (1882) 7 App. Cas. 447, per Lord Selborne, L.C.

⁸ *Luker v. Denis*, (1877) 7 Ch. D. 227; *Parker v. Whyte*, (1863) 1 H. & M. 167.

⁹ *Clements v. Wells*, (1865) 1 Eq. 200; *Wilson v. Hart*, (1861) 1 Ch. 463.

escence in its breach,¹⁰ or circumstances have arisen rendering it inequitable to enforce the restrictive covenant.

In *Wheatley v. Westminster Brymbo Coal Company*,¹ where the covenant was to work the mine uninterruptedly, efficiently and regularly, according to the usual or most improved practice, it was held by Malins, V.-C., that there was no obligation on the lessees to sink pits, although that might be the most efficient mode of working; and that so long as the minimum rent was paid they could not be compelled to work the mine at all; that the lessees having only raised a small quantity of coal by working through an adjoining mine without sinking pits on the lessor's property, had committed no breach of contract, but if they had done so the remedy was at law and not in equity. Malins, V.-C., says, at p. 552: "If the lessor had covenanted that he would not do a certain thing, and had proceeded to do it, this Court would prevent him doing it. If it is a thing to be done under the direction of the Court, and he refuses to do that certain thing, the Court would oblige him to do it; but I take it that nothing is more clear than this, that the Court will not undertake either the construction of a railway, the management of a brewery, or the management of a colliery, or anything of that kind. It will appoint a receiver or manager in certain cases. . . ." ²

In *Stocker v. Dean*,³ Lord Romilly held a covenant "at all times thereafter, to give to the plaintiff, his heirs and assigns, the right of pre-emption" to be restricted to the life of the covenantor.

As to cases where restrictive covenants have been enforced against a purchaser with notice, see *Tulk v. Moxhay*,⁴ where the covenant was affirmative in its terms, but was held by the Court to imply a negative, and *Haywood v. The Brunswick Permanent Benefit Building Society*,⁵ where the Court decided that they would not extend the doctrine of *Tulk v. Moxhay* to affirmative covenants compelling a man to lay out money or do any act of an active character, but that it was to be confined to restrictive covenants.⁶

¹⁰ *Gibson v. Doeg*, (1857) 2 H. & N. 615; *Sayers v. Collyer*, (1884) 28 Ch. D. 103.

¹ (1869) L. R. 9 Eq. 538.

² See also *Anon. Amb.* p. 209, per Lord Hardwicke, *Birmingham Canal Co. v. Lloyd*, (1812) 18 Ves. 515, per Lord Eldon.

³ (1852) 16 Benv. 161.

⁴ (1848) 2 Ph. 774.

⁵ (1881) 8 Q. B. D. 403.

⁶ See also *Austerberry v. Corporation of Oldham*, (1885) 29 Ch. D. 750; see also *Knight v. Simmonds*, (1896) 2 Ch. 294.

Usual Covenants. In *Church v. Brown*,⁷ Lord Eldon, after great consideration, notwithstanding the doubts contained in *Morgan v. Slaughter*,⁸ and *Folkingham v. Croft*,⁹ upheld Lord Thurlow's decision in *Henderson v. Hay*,¹⁰ to the effect that under an agreement to grant a lease upon common and usual covenants, the lessor was entitled as a covenant "incidental to the lease" to a covenant from the lessee not to assign without license, and decided that it made no difference whether the agreement declared that the lease contracted for was to contain the usual and proper covenants or not; that, in every agreement, whether as to freehold or leasehold estate, it was implied that there were to be usual and proper covenants; that both lessor and lessee would be entitled to such covenants as were strictly incidental to the subject of the agreement, and to no others. Speaking of a covenant to sell a fee simple estate, free from encumbrances, he says:¹ "It is clear that covenant carries *in gremio*, and in the bosom of it, the right to proper covenants." Covenants become usual and proper covenants only because by common consent they are found essential to perfect the contract between the parties.

Covenants Running With the Land. A covenant is said to run with the land when it "relates to, touches and concerns" the land in such a way that the right to take advantage of it passes to the assignee of that land.

All implied covenants have been held to run with the land.²

A covenant which does not directly affect the nature, quality or value of the land, or the mode of occupying it, is a collateral covenant, and will not bind the assignee of the land, although assigns are expressly named in the covenant.³

With What Covenants Run. Covenants will not run with rent,⁴ but will with an assignable right to dig for minerals.⁵ Except

⁷ (1808) 15 Ves. 253.

⁸ (1793) 1 Esp. N. P. C. 7.

⁹ (1817) 3 Anstr. 700.

¹⁰ (1792) 3 Bro. C. C. 632.

¹ P. 263.

² *Spencer's Case*, 5 Co. Rep. 17.

³ *Mayor of Congleton v. Pattison*, (1808) 10 East, 135.

⁴ *Milnes v. Branch*, (1816) 5 M. & S. 411; *Randall v. Rigby*, (1838) 4 M. & W. 135.

⁵ *Martyn v. Williams*, (1857) 1 H. & N. 817; *Norval v. Pascoe*, (1864) 10 Jur. N. S. 792; *Lord Portmore v. Bunn*, (1823) 1 B. & C. 694.

in cases between landlord and tenant, no covenant which imposes a burden upon land would seem to run with the land, unless the covenant upon the true construction of the deed containing the covenant amounts to either a grant of an easement, or a rent-charge, or some estate or interest in the land.⁹

Void Covenants. Covenants may be void for want of capacity,¹⁰ or if unlawful,¹ or if made for an unlawful consideration,² or if impossible of performance at the time of making the contract,³ or if contrary to public policy,⁴ but will not be wholly void if it is divisible, and one alternative not contrary to public policy.⁵

The rule now is that if the legal part of the contract in question can be severed from that which is illegal, the former shall stand good whether the illegality exist by Statute or common law.⁶

In a Nova Scotia case a deed contained a covenant regarding the land conveyed that it should "never be hereafter sold but should be left for the common benefit of both parties and their successors," and it was held enforceable.⁷

In Quebec notorious insanity or imbecility does not render the acts of persons suffering from it nulls unless the parties be interdicted, and such acts are only annulable for lesion.⁸

Agreement or Lease. Whether an instrument is to operate as a lease or an agreement, depends upon the intention, to be collected from the instrument, and from the nature and condition of the subject-matter, without reference to extrinsic circumstances or subsequent acts, and it was accordingly held that the particular memorandum was not a lease but an agreement for a demise in *futuro*.¹⁰

⁹ Haywood v. Brunswick Building Society, (1881) 8 Q. B. D. 408; Austerberry v. Corporation of Oldham, (1885) 29 Ch. D. 750.

¹⁰ Ludford v. Barber, (1786) 1 T. R. 86.

¹ Shep. Touch. 163.

² Waldo v. Martin, (1825) 4 B. & C. 319; The P. B. of Halifax v. Johnson, (1892) 20 S. C. R. 541; Major v. McCraney, (1897) 5 B. C. R. 571.

³ Clifford v. Watts, (1870) L. R. 5 C. P. 577.; see McKenna v. Mcnafee, (1887) 15 S. C. R. 311.

⁴ Harrington v. Duchatel, (1781) 1 Bro. C. C. 125.

⁵ Robinson v. Ommaney, (1883) 23 Ch. D. 285.

⁶ Kitching v. Hicks, (1884) 6 O. R. 739, per Osler, J.

⁷ McLean v. McKay, (1873) L. R. 5 P. C. 327.

⁸ D'estimaerville v. Tousignantes qual, (1875) 1 Q. L. R. 39.

¹⁰ See Doe d. Morgan v. Williams, and Wayne v. Powell, (1844) 7 M. & G. 980.

Per Tindal, C.J.¹ "In order to ascertain the intention, it is important to consider whether possession was given by the instrument, and whether it contains words of present demise."

² "According to *Poole v. Bentley*,³ to constitute a lease, it is necessary that it should appear that the parties contemplated the creation of a present interest (i.e., a present *interesse termini*, in other words, a presently vested right to enter and take possession, either immediately or at a future period, as the *habendum* may be) in the subject matter."

⁴ "A grant of an easement in *alieno solo* being an incorporeal hereditament can only be by deed.⁵ "Without an instrument under seal the tenants would not be entitled to exercise rights absolutely necessary for the enjoyment of the subject matter of the demise."

Per Maule, J.⁶ "The easement of depositing rubbish on the surface in sinking the pit, and of breaking into the soil, and of making a wharf, which forms a very material part of the contract, could not pass by this unsealed instrument, inasmuch as it is a thing that lies in grant."

⁷ "Here, if the parties had at any time afterwards said what estate they took under this instrument, their statements would have been evidence against themselves."

Per Erle, J.: "I also am of opinion that this instrument is an agreement only, and does not amount to a lease. It is to be construed with reference to the apparent intention of the parties and to the nature and state of the subject-matter. Mineral property requires a most definite statement of the rights of the parties. . . . In mining property it is necessary to have power to deposit rubbish. . . . If there were no title in the lessor, the lessees would not, I think, be bound to accept a lease."

Agreement for a Lease. In *Jones v. Reynolds*,⁸ Patteson, J., said at p. 516: "Here the term was not to commence till the 24th of June, 1825; it was not meant that possession should be taken in the meantime; and the proportions in which the iron ores should be worked were to be ascertained at a future day. There was not, therefore, any present demise."

¹ P. 988.

² P. 989.

³ (1809) 2 Campb. 286; 12 East, 168.

⁴ P. 990.

⁵ *Bird v. Higginson*, (1835) 2 A. & E. 696; 4 N. & M. 505.

⁶ P. 992.

⁷ P. 993.

⁸ (1841) 1 Q. B. 506.

In *Pinero v. Judson*,⁹ and *Chapman v. Bluck*,¹⁰ the tenancy was to begin from a past day.

Wightman, J., said:¹ "I agree that if an instrument be in other respects a present demise, a stipulation in it for a future lease will not reduce it to a mere agreement. Stipulating for a future lease, in such a case, is only providing for a formal assurance. Laurence, J., so puts it in *Morgan dem. Dowding v. Bissell*,² and he said in that case:³ "Where there is an instrument, by which it appears that one party is to give possession and the other to take it, that is a lease, unless it can be collected from the instrument itself, that it is an agreement only for a lease to be afterwards made." Here no present demise appears; the term is to begin from the ensuing 24th of June; and before an actual demise, there were matters to be ascertained, without which the terms of holding would not be perfectly complete. Therefore this agreement comes within the distinction furnished by *Morgan dem. Dowding v. Bissell*,⁴ and I may say all the cases."

In *Hodgkinson v. Crowe*,⁵ Sir W. M. James, L.J., in giving judgment for the Court of Appeal, decided that under an agreement for a lease to contain "All usual and customary mining clauses," the landlord was not entitled to have inserted in the lease a proviso for re-entry on breach of any of the covenants by the lessee, or otherwise than on non-payment of rent, and said at p. 627, "A case in which I was counsel many years ago produced a strong effect upon my mind—a case where a forfeiture was enforced in which there was no legal defence, and no equitable relief could be obtained. Extensive copperworks were forfeited by reason of a breach of covenant in not keeping up a fence which had become perfectly useless, and the not keeping it up did not do one shilling's worth of damage to anybody. . . . A landlord before he parts with his property can make any stipulation he likes, and if he wishes to let his land, not for an absolute term, but for a term determinable upon certain events, it is for him to provide by the agreement for the insertion in the lease of the provisos and stipulations which he thinks necessary for his protection."

⁹ (1829) 6 Bing. 206.

¹⁰ (1838) 4 Bing. New Ca. 187.

¹ *Jones v. Reynolds*, p. 517.

² (1810) 3 Taunt. 65, 68.

³ *At Nisi Prius* (lb. 65).

⁴ (1810) 3 Taunt. 65; *John v. Jenkins*, (1832) 1 Cro. & M. 227; 3 Tyrwh. 170.

⁵ (1875) L. R. 10 Chy. 622.

In *Parker v. Taswell*,⁶ it was decided that though an instrument might be void under 9 Vict. c. 106, s. 3, as containing words of present demise and being under seal, yet it might be treated as an agreement.⁷

Section 7 of the English Act, 1897, c. 119, is identical with section 3 of the English Act, 9 Vict. c. 106, and provides, "A partition and an exchange of land, and a lease required by law to be in writing of land, and an assignment of a chattel interest in land, and a surrender in writing of land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed."

All agreements for leases are void if not in writing even though the term contemplated be less than three years, and the rent more than two-thirds the full improved value.

But if the agreement be by reason of part performance or otherwise, one which is capable of being specifically performed, both parties will stand in the same position as if a lease under seal had been granted.⁸

A lease for a term not exceeding three years at a rent of at least two-thirds of the full improved value may be made by parol, otherwise it must be by deed.

If a written lease is void as a lease by reason of not being under seal it may operate as an agreement for a lease of which specific performance will be decreed.⁹

At law entry and payment of rent under a void agreement or lease created a tenancy from year to year, upon the terms of such agreement or lease so far as they were consistent with a yearly tenancy.

But by the Judicature Act the rules of equity are to prevail, and if specific performance would be decreed the parties are considered as having the same rights as if a lease under seal had been granted.

Possession and Payment. Where a party has been let into possession of lands under a contract of purchase, but does not complete the purchase, and refuses to pay the purchase money, and no conveyance is executed, the vendor cannot recover from him the

⁶ (1858) 2 De G. & J. 559.

⁷ See also *Hobbs v. Ontario L. & D. Co.*, (1890) 18 S. C. R. 537, per Gwynne, J.

⁸ *Walsh v. Lonsdale*, (1882) 21 Ch. Div. 9; *Lowther v. Heaver*, (1889) 41 Ch. Div. 264.

⁹ *Parker v. Taswell*, (1858) 2 De G. & J. 559.

whole amount of the purchase money, but only the damages actually sustained by his breach of contract;⁹¹ and this applies to the case of a purchase under statutory powers.⁹² It is well established in equity that in the case of a contract for the sale and purchase of land, although the legal property does not pass until the execution of the conveyance, during the interval prior to completion the vendor in possession is a trustee for the purchaser, and as such has duties to perform towards him, not exactly the same as in the case of other trustees, but certain duties, one of which is to use reasonable care to preserve the property in a reasonable state of preservation, and, so far as may be, as it was when the contract was made. Where from any cause a long period of time elapses during which such possession of the vendor continues and deterioration of the property takes place, other considerations may come in,¹⁰ but in a case where the injury complained of was the removal of a considerable portion of the soil for purposes for which the vendor had no right to allow such removal without the knowledge of the purchaser the purchaser was held, notwithstanding conveyance, to be entitled to damages against the vendor therefor.¹

In *Holmes v. Powell*,² Lord Justice Knight Bruce says: "I apprehend that by the law of England when a man is of right and *de facto* in the possession of a corporeal hereditament, he is entitled to impute knowledge of that possession to all who deal for any interest in the property, conflicting or inconsistent with the title or alleged title under which he is in possession or which he has a right to connect with his possession of the property. It is equally a part of the law of the country, as I understand it, that a man who knows or cannot be heard to deny that he knows another to be in possession of a certain property, cannot for any civil purpose, as against him at least, be heard to deny having thereby notice of the title or alleged title under which or in respect of which the former is and claims to be in possession. Lord Eldon's language in *Allen v. Anthony*,³ where he says, 'It is so far settled as not to be disputed that a person purchasing when there is a tenant in possession, if he neglects to enquire into the title, must take, subject to such rights

⁹¹ *Laird v. Pim*, (1841) 7 M. & W. 474.

⁹² *East London Union v. Metropolitan Ry. Co.*, (1869) L. R. 4 Ex. 310.

¹⁰ *Phillips v. Silvester*, (1872) L. R. 8 Ch. 173.

¹ *Clark v. Ramuz*, (1891) 2 Q. B. 456.

² (1856) 8 DeG. M. & G. 580.

³ (1816) 1 Mer. 282-4.

as the tenant may have,' recognizes, as I understand it, both rules. But possession of a corporeal hereditament to be effectual need not be continually visible or without cessation actively asserted. If a man has once received rightful and actual possession of land, he may go to any distance from it without authorizing any servant or agent or other person to enter upon it or look after it, may leave it for years uncultivated and unused may set no mark of ownership upon it, and his possession may, nevertheless, still continue, at least, unless his conduct afford evidence of intentional abandonment, which such conduct, as I have mentioned, would not necessarily do."

In Ontario, however, "The Registry Act,"⁴ provides that "Priority of registration shall prevail unless before the prior registration there has been actual notice of the prior instrument by the party claiming under the prior registration."

A definition of "instrument" is contained in the Act.⁴¹

In *Grey v. Ball*⁴² it was held that possession under an equitable interest could not prevail against the registered title of an incumbrancer, possession not being such notice of title as will affect the right of a party claiming under a registered conveyance. In *Harty v. Appleby*⁵ it was laid down as a settled doctrine, that in Ontario possession is not notice as against a registered title.⁶

Until the purchaser gets, or may but for his own default, get possession, the seller must, at his own risk, take care of the property.⁷

In Ontario a purchaser whose purchase money is payable by instalments which become due before his right to a conveyance arrives, is entitled to pay them into Court instead of to the vendor, where the vendor's title is defective or subject to incumbrances.⁸

Where by the terms of the contract the purchaser is entitled to his conveyance upon payment of the purchase money the vendor must show that at the time his action for payment was brought he was ready, able and willing to convey.⁹

⁴ R. S. O. 1897, c. 136, s. 97.

⁴¹ Sec. 2. s.-s. 1.

⁴² (1876) 23 Grant, 390.

⁵ (1872) 19 Grant, 205.

⁶ See also *Toronto v. Jarvis*, (1894) 25 S. C. R. 237.

⁷ *Fisken v. Wride*, (1863) 11 Grant, 248, and cases there cited; *The People's L. & D. Co. v. Bacon*, (1879) 27 Grant, 302.

⁸ *Armstrong v. Auger*, (1891) 21 O. R. 102, per Street, J.; *O'Keefe v. Taylor*, (1851) 2 Grant, 305; *Thompson v. Brunskill*, (1859) 7 Gr. 542; *Chantler v. Ince*, (1859) 7 Gr. 432; *Wardell v. Trenouth*, (1877) 24 Gr. 465; *Cameron v. Carter*, (1885) 9 O. R. 426; *Greenwood v. Turner*, (1891) 64 L. T. N. S. 261.
⁹ *McDonald v. Murray*, (1885) 11 O. R. 101.

In Ontario there seems no substantial distinction, since the Judicature Act, between a vendor's action to recover his purchase money and a vendor's action for specific performance where the purchase money is payable contemporaneously with the delivery of the conveyance.¹⁰

Deposit. A pecuniary deposit upon a purchase is considered as a payment in part of the purchase money, and not as a mere pledge;¹ and is also regarded as a guarantee for the performance of the contract, or a security for the completion of the purchase, so that if the contract goes off by the purchaser's default, the vendor retains the deposit as forfeited.¹² If the vendor can not make a good title, or is in default so as to entitle the purchaser to rescind the contract of sale, the purchaser may recover back his deposit.¹³ Where the vendor had recovered judgment for a part of the purchase money, and afterwards cancelled the agreement, as he had a right by the contract to do, it was decided that, having cancelled the contract, he could not afterwards enforce the judgment upon the principle that he could not take back the land and at the same time ask for the purchase money; the very essence of such a transaction being that the vendor keeps the land, and the purchaser the purchase money.¹⁴

Abatement. Where a contract is made by one partner for the sale of partnership lands, to which the other partner refuses to consent, the purchaser cannot insist upon taking the share in the lands of the contracting partner with a proportionate abatement in the price.¹⁵

An owner of real estate who alone enters into an agreement to

¹⁰ *Armstrong v. Auger*, (1891) 21 O. R. 103, per Street, J.

¹ *Ockenden v. Henly*, (1858) E. B. & E. 492, per Lord Campbell, C. J.

¹² *Soper v. Arnold*, (1889) 14 App. Cas. 429, 435; *Howe v. Smith*, (1884) 27 Ch. D. 89, 101, per Fry, L.J., distinguishing *Palmer v. Temple*, (1839) 9 Ad. & E. 508; *Fraser v. Ryan*, (1897) 24 A. R. 441, 443, per Boyd C.; *Gibbons v. Cozens*, (1898) 18 C. L. T. 179, per Street, J.

¹³ *Want v. Stillibras*, (1873) L. R.

8 Ex. 175, followed in *Saxby v. Thomas*, (1891) W. N. 4; see also *In re Birmingham and District Land Co.*, and *Allday*, (1893) 1 Ch. 342.

¹⁴ *Cameron v. Bradbury*, (1862) 9 Gr. 67; *Fraser v. Ryan*, (1897) 24 A. R. 445.

¹⁵ *Crain v. Rapple*, (1893) 20 A. R. 291; see *Castle v. Wilkinson*, (1879) L. R. 5 Ch. 534; *Hooper v. Smart*, (1874) L. R. 18 Eq. 683; *Horrook v. Rigby*, (1878) 9 Ch. D. 180; *Burrow v. Scammell*, (1881) 19 Ch. D. 175.

sell will be required to procure a bar of his wife's dower or abate the purchase money in the event of her refusal.²

Fox v. Mackreth,³ per Lord Thurlow: "If you can ever establish in a Court of Equity, that a contract has been fraudulently made, and that a party to that contract has lost by that fraud, in the common case, whatever the conveyance be, the party will have that money to pay."

In *Davis v. Shepherd*,⁴ Lord Cranworth, L.C., said at p. 415: "When the owner of real property, whether surface land or minerals, binds himself by a written agreement to grant a lease, and suffers his intended lessee, without a lease, to take possession, he must be understood to allow the lessee to take possession of all which he has engaged to demise. In the case of a demise of unworked minerals, there can hardly be said to be actual possession of any part of them except of what the intended lessee is actually working; but I think that when the lessee does take possession and commences working accordingly he must be considered as constructively in possession of all which the lessor has bound himself to demise. I cannot, however, think that the lessee can be treated by this Court as constructively in possession of anything of which the lessor did not intend to put him in possession, and of which this Court shall say the lessor is not bound to grant a lease."

Payment into Court. In *Lewis v. James*,⁵ the plaintiff commenced an action against the defendant for specific performance of an agreement for a lease of a coal mine by the plaintiffs to the defendant, at a royalty, as the plaintiffs alleged, of 10d. per ton. The defendant counter-claimed to have specific performance or a royalty of less amount. The defendant was in possession and raising and selling large quantities of coal, but he alleged that he had expended on the mine more than the value of the coal raised. He also brought an action against the plaintiffs in the Q. B. D. to obtain damages for misrepresentations alleged to have been made to him for the purpose of inducing him to enter into the agreement, which action was still pending. The plaintiffs moved for an interlocutory order that the defendant might be ordered to pay into Court the amount of royalties at 10d. per ton on the coal he had raised. Bacon, V.C., refused the motion.

² *Loughhead v. Stubbs*, (1880) 27 Grant, 387.

³ (1788) 2 Bro. C. C. 420.

⁴ (1866) 1 Ch. 410.

⁵ (1886) 32 Ch. D. 326.

It was held on appeal, that although it would not be right while the royalty was in dispute to order the defendant to pay into Court the amount of royalties at the rate claimed by the plaintiff, he ought to be ordered to pay in the amount of royalties at the rate which he himself alleged to be the one agreed upon, and that as his carrying away coal diminished the value of the property, he would not have the usual option of giving up possession instead of paying money into Court.

Title. It is an elementary principle that if the vendor contracts to sell land without any saving condition as to the nature of the title he is to confer upon the purchaser, the law implies that it is incumbent on him to make out a good title in fee simple.⁷

In carrying out a sale of land the vendor is in all cases bound to deliver an abstract showing a good title unless this duty is dispensed with by the contract.⁸

Where the terms of the contract require the vendor to make out a title in fee simple and there is a condition limiting the time for taking objection and waiving all objections not taken within that time, and it is made to appear that the vendor has nothing at all to sell, not even the possession, it has been held,⁹ that such an objection going to the "root of the title," as it has been termed, is not precluded by a condition expressed in like terms with that under consideration.¹⁰

"In the present case the purchaser will get a present holding title accompanied with possession, a title in fee defeasible, it is true upon the happening of a contingency, and therefore, not a marketable title, but still a title, though a precarious one. The objection here taken is therefore one which does not go to the root of the title."¹

If a contract to buy land is made subject to the title being approved by the purchaser's solicitor, the intending purchaser will be bound unless his solicitor reasonably disapproves of the title.²

Where the purchaser objected to the title on the ground that the Crown was entitled to the mines under the land, the Court pre-

⁷ Per Strong, C.J., in *Armstrong v. Nason*, (1895) 25 S. C. R. at p. 268.

⁸ *Ib.*

⁹ Re Tanqueray, Willaume and Landau, (1881) 20 Ch. D. 465.

¹⁰ *Ib.*

¹ *Armstrong v. Nason*, *supra*, per Strong, C.J., p. 270. See also Har-

nett v. Baker, (1875) L. R. 20 Eq. 50; and Waddell v. Wolfe, (1874) L. R. 9 Q. B. 515.

² *Hussey v. Horne-Payne*, (1879) 4 App. Cas. 311; *Clack v. Wood*, (1882) 9 Q. B. D. 276, C. A.; *Chipperfield v. Carter*, (1895) 72 L. T. 487.

sumed the non-existence of mines from the fact that no search had been made for upwards of a century; and the reservation of mining rights being no objection to the title if it is proved that there are no mines, the Court forced the title on the purchaser.³

Where there is a defect in the title of the vendors to the minerals in land contracted to be sold, specific performance has been decreed with compensation.³¹ There is a dictum, however, by Lord St. Leonards³² to the effect that such compensation would not be granted.

It has been decided in Nova Scotia that in order to require the Crown to take steps to restore its rights to land in the occupation of a stranger the adverse possession must be exclusive, continuous and notorious, and that the Crown was not affected with notice under the Registry Act of the recording of a deed by a stranger to the title; also that acts of ownership exercised by a party upon land to which he has a good title will not be extended to adjoining land included in his deed but to which he has no title, in the absence of actual occupation of a part of the land claimed.⁴

In *Bellamy v. Debenham*,⁵ the Court of Appeal held, following *Forrer v. Nash*,⁶ that, "when a person sells property which he is neither able to convey himself nor has the power to compel a conveyance of it from any other person, the purchaser, as soon as he finds that to be the case may say, 'I will have nothing to do with it.' The purchaser is not bound to wait to see whether the vendor can induce some third person (who has the power) to join in making a good title to the property sold." In this case the vendor did not own the mines and minerals under the house agreed to be sold.⁷

In *Marsden v. Moore*,⁸ Martin, B. (Bramwell, B., and Channell, B., concurring) said:⁹ "I think that the law is correctly laid down in *Pordage v. Cole*.¹⁰ In order to see the meaning of this contract the

³ *Lyddal v. Weston*, (1739) 2 Atk.

19.

³¹ *Seaman v. Vawdrey*, (1810) 16 Ves. 390; *Ramsden v. Hirst*, (1858) 4 Jur. N. S. 200.

³² *Smithson v. Powell*, (1852) 20 L. T. (O. S.) 105; see also *Re Bunbury's estate*, (1867), 1 Ir. R. Ex. 458.

⁴ *McKay v. McDonald*, (1896) 28 N. S. R. 99. The doctrine of *Smyth v. McDonald*, 1 Old., is not to be extended (*ib.*).

⁵ (1891) 1 Ch. 412.

⁶ (1865) 35 Beav. 167.

⁷ See also *Hargart v. Scott*, (1830) 1 Russ. & My. 293; *In re Head's Trustees v. Macdonald*, (1890) 45 Ch. D. 310; *Weston v. Savage*, (1879) 10 Ch. D. 736; see *Harris v. Robinson*, (1892) 21 S. C. R. 390.

⁸ (1859) 4 H. & N. 500.

⁹ At p. 504.

¹⁰ (1670) 1 Saund. 319.

parts of it should be separately considered. First, the plaintiff agrees to sell to the defendant a share in a mining sett for £250, and the defendants agree to purchase at that price. The sale and payment of the money are to be contemporaneous acts. In the notes to *Porlage v. Cole*,¹ it is said, rule 4, 'Where the mutual covenants go to the whole consideration on both sides, they are mutual conditions and performance must be averred.' And rule 5, 'Where two acts are to be done at the same time, neither party can maintain an action without showing performance of, or an offer to perform his part.' This particularly applies to the case of sales, where the common understanding is that one thing is to be exchanged for another. Then as to the other part, as soon as the company is registered the defendants agree to pay the sum of £250 'as hereinbefore stated.' That does not convey to my mind that the defendants meant, if it should turn out that the plaintiff had no title, to take their chance of being able to recover back the £250 in an action for money had and received."

It was held by the Court of Appeal of New Zealand that in an action for conversion of auriferous earth, possession of the site, comprised in a mining lease from the Crown, from which the earth has slipped, is *prima facie* evidence of property in the earth, and it is not necessary regularly to prove a title from the lessees.¹¹

Objections to Title. *Stevens v. Guppy*,² in which judgment was pronounced, first by Lord Eldon and subsequently by Lord Lyndhurst on re-argument after Lord Eldon's resignation decides that a purchaser of a share in a co-partnership business, including mines and minerals, does not waive objections to the title by taking possession of the property and acting as a partner, when the contract stipulates that a good title shall be made by a specified future day, and it appears to have been the intention of the parties that the purchaser should immediately and before that day have possession.

The general rule of law in regard to rights of way may be stated as follows: Where it is obvious that there is a right of way enjoyed by some third person, or by the public in general, the existence of such right of way cannot give rise to any objection to the title, as, for example, if the estate sold is a large one with a public highway running through it, then it is obvious that it is not intended to sell the property free from such right of way; but the purchaser would

¹ (1670) 1 Saund. 319.

N. Z. C. A. 263.

¹¹ *Clayton v. Morrison*. (1873) 2

² (1826) 3 Russ. 171.

take subject to the right of way. The right is in such a case patent as opposed to the term "latent," as used by Lord Loughborough, in the case of *Bowles v. Round*,³ where he said that the road going through a meadow was not a latent defect.

A "latent defect" has been defined to be "one which a provident purchaser could not discover."³¹

A right of way unknown to both vendor and purchaser would be a "latent defect."⁴

As to when contract is at an end, see *Northcote v. Vigeon*.⁵

Specific Performance. The jurisdiction which Courts of Equity formerly exercised by way of specific performance, a jurisdiction which is now in Ontario, since the Judicature Act, administered, but upon the same principles and subject to the same limitations, by all Courts, is peculiar. It is not sufficient to entitle a party seeking this peculiar relief to show what would be sufficient to entitle him to recover in a Court of law, namely, that a contract existed, but, as is well shewn by the quotations made in the judgment of the learned Chief Justice of the Court of Appeals from the judgment of the House of Lords in *Lamare v. Dixon*,⁶ and from Lord Justice Fry's *Treatise on Specific Performance*,⁶¹ the exercise of the jurisdiction is a matter of judicial discretion, one which is said to be exercised as far as possible upon fixed rules and principles, but which is, nevertheless, more elastic than is generally permitted in the administration of judicial remedies. In particular, it is a remedy in the application of which much regard is shown to the conduct of the party seeking relief.⁷

Where damages are a sufficient remedy, specific performance will not be granted.⁸

A purchaser under an executory contract is sometimes said, in loose phraseology, to have an equitable title, but the distinction as regards equitable title between his rights under such a contract before payment of his purchase money, and a true equitable title, is well marked, and is pointed out by Lord Cottenham in *Tasker v. Small*.⁹

³ (1800) 5 Ves. 508.

³¹ *Lucas v. James*, (1849) 7 Ha. 410, at p. 418.

⁴ In *Ashburner v. Sewell*, (1891) 3 Ch. 405, per Chitty, J., p. 408.

⁵ (1894) 22 S. C. R. 740.

⁶ (1873) L. R. 6 H. L. 423.

⁶¹ 2nd Ed., s. 25.

⁷ In *Harris v. Robinson*, (1892) 21 S. C. R. 390, per Strong, C.J. (for the Court), at p. 397.

⁸ *Nutbrown v. Thornton*, (1784) 10 Ves. 161.

⁹ (1837) 3 My. & C. 63; and Lord O'Hagan in *Shaw v. Foster*, (1872) L. R. 5 H. L. 349; see also *Wall v. Bright*, (1820) 1 Jac. & W. 503.

Whilst his rights under such a contract are incomplete owing to the non-payment of his purchase money, a purchaser has an undoubted right to assign his contract, but he cannot sell the land itself, and cannot be properly called the equitable owner of it.¹ The authorities are clear that when the vendor has no title whatever to the property he assumes to sell when he enters into the agreement, as distinguished from cases in which he has some, though an imperfect title, that the purchaser may, in the first case, peremptorily put an end to the bargain, and is not bound to give that reasonable notice which it is considered proper to require from him when the title is merely imperfect.²

"Granting that time was not originally of the essence, or that, if so, it had been waived by the appellant, yet, considering the nature of the property and the object for which, as must have been well known to the respondent, the appellant was seeking to acquire it, namely, for a speculative purpose, that is, in order to sell again at a profit, and that, therefore, it was of the utmost consequence to him that he should be promptly put in a position to take advantage of a rise in the real estate market; the delay from the date of the contract on the 1st of August, 1888, to the date of the action on 22nd January, 1889, nearly six months, was most unreasonable. The rule which governs the Courts in giving relief by way of specific performance of agreements, even in cases in which time is not made of the essence of the contract, is that a plaintiff seeking such relief must show that he has been always ready and eager to carry out the contract on his part."³

When the agreement is incomplete, some matters being left for future arrangement, the agreement cannot be specifically enforced.⁴

As to effect of delay after the parties to an agreement are at arm's length on the question of completion, see *Huxham v. Llewellyn*,⁵ *Glasbrook v. Richardson*.⁶

Generally speaking, a Court of Equity will not enforce, on behalf of a purchaser, a contract by trustees which amounts to a breach of trust, and of which the beneficiaries have a right to complain as a breach of trust.⁶

¹ *Harris v. Robinson*, (*supra*) p. 401.

² *Ib.* p. 402.

³ *Harris v. Robinson*, *ib.*, per Strong, C.J., p. 403

⁴ *Williston v. Lawson*, (1891) 19 S. C. R. 673.

⁵ (1873) 21 W. R. 570.

⁶ (1874) 23 W. R. 51.

⁶ *Sea v. McLean*, (1887) 14 S. C. R. 636, per Ritchie, C.J.

Where trustees have a discretion to sell, and exercise it *bona fide*, their power to sell has been said to be complete and unconditional as regards *bona fide* purchasers, whatever liabilities the trustees may incur towards their *cestuis que trustent* if they act wrongfully towards them.⁷

As to land described "more or less."⁸

A contract revocable by the party against whom it is sought to enforce it, will not be enforced;⁹ nor if made without consideration.¹⁰

Part Performance. Specific performance of an oral contract will be decreed on the "doctrine of part performance" where the applicant has partly performed his part in the expectation that the other party would perform his part;¹ but the acts relied upon as part performance must be unequivocally and in their own nature connected with the agreement contended for,² and on this basis expenditure, after being let into possession, has been held to be performance.³

It has been held in Nova Scotia that a parol contract, where executed on one side, may be enforced.⁴

Cases in Which Specific Performance Decreed. *Blakesley v. Whieldon*⁵ was a case in which there was a contract for the sale of the minerals under a given quantity of surface, at a certain price, payable by instalment, the times of payment to be accelerated if more than a certain quantity of minerals should be gotten from time to time, wherein it was decided that the vendor impliedly reserves the power of entering and inspecting the mines, to ascertain the quantity of minerals from time to time gotten therefrom, and was entitled to specific performance of the contract, with a covenant reserving such power in the conveyance. *Wigram, V.C.*, says:⁶ "The general principle of law that, where a person makes a grant of any given thing, he impliedly grants that also which is necessary to make the grant of the principal subject effectual, does not admit of dispute.⁷ And this principle is carried to the extent, that the implied

⁷ *Ib.*, per *Taschereau, J.*, p. 639.

⁸ See *Ib.*

⁹ *Hucy v. Birch*, (1804) 9 Ves. 357.

¹⁰ *Walrond v. Walrond*, (1858) Johns. 18.

¹ *Mundy v. Jolliffe*, (1839) 5 My. & Cr. 177; *Wigley v. Wigley*, (1877) 5 Ch. D. 887, C. A.

² *Maddison v. Alderson*, (1883) 8 App. Cas. 467.

⁵ *Williams v. Evans*, (1875) 32 L. T. 360.

⁴ *Murdoch v. Currell*, (1893) 25 N. S. R. 293.

² (1841) 1 Ha. 176.

⁶ P. 180.

⁷ See *Co. Litt.* 56 a., 163 a.; 3 *Com. Dig.* 85, ed. 5; 3 *Burge Com.* 416; *Pomfret v. Ricroft*, (1670) 1 *Saund.* 320, and notes.

grant entitles the lessee to whatever is necessary to the full enjoyment of the subject of the grant."⁸

An agreement for the purchase of an estate may be specifically enforced, although an error of a trifling nature in the character of the property shall have appeared in the advertisement for sale.⁹

In *Heywood v. Cope*,¹⁰ Romilly, M.R., said:¹ "The first objection is upon the terms of the contract, which are said to be too vague to be carried into effect. The words are these: Cope agrees with Haywood 'for those two seams of coal known as the two-feet coal and the three-feet coal, lying under lands to be hereafter defined in the Bank End lot near Norton; and H. agrees to let C. have the before-mentioned two seams, at the price before mentioned. It is said that this is an agreement to lease an uncertain quantity of land, and, therefore that it is too vague to be enforced. It is so, if this be the right construction of the contract. But, on the other hand, it is said the proper way to read it is this—as an agreement to lease two seams of coal, lying under the lands of the B. E. estate, the boundaries of which are to be hereafter described and defined. I think this is the correct meaning of the contract, and this appears to have been the meaning of the contract attached to it by the parties themselves on both sides."

"The next objection is the misrepresentation, or rather a suppression of the truth. It is shown that 20 years before the contract the plaintiff worked these seams of coal, and then abandoned the work because it was not profitable. I think this objection also fails."²

³ "The next question is was the plaintiff bound to say that he had worked the mine, and that he had found it unprofitable. . . . It may turn out better, or it may turn out worse; and it is well known that leases and sales are always made with reference to this circumstance." Held, that defendant could not, on that ground, reject it; and also that the mere inadequacy or excess of value was not a ground for exercising the discretion of the Court to refuse specific performance. A question was raised as to whether the defendant had waived his right of objecting to the title, and Romilly, M.R., said: ⁴ "I should not have thought that the possession of the mine was an acceptance of the title."

⁸ *Senhouse v. Christian*, (1787) 1 T. R. 560.

¹ P. 146.

⁹ *Smithson v. Powell*, (1852) 20 L. T. 105.

² P. 147.

³ P. 149.

⁴ P. 153.

¹⁰ (1858) 25 Beav. 140.

In *Onions v. Cohen*⁵ there was an agreement to grant a lease containing covenants by the lessor for quiet enjoyment, and by the lessee to repair. Mining operations had been carried on underneath the surface, and it was alleged were damaging to the premises. The term being for seven years, and possession having been taken on the faith of having a covenant for quiet enjoyment, the lessor was compelled to execute a lease with a covenant for quiet enjoyment.

In *Colby v. Gadsden*⁶ a delay from May to December in filing a bill for specific performance, was held by Romilly, M.R., not to be sufficient to deprive a vendor of his right to have the contract enforced. The purchaser was let into the receipt of the rents before completion and without payment of his purchase money. Great delay having occurred, and no payment having been made to the vendor, he gave notice to the tenants, and prevented any further receipt of the rents by the purchaser, and it was held that the vendor was, nevertheless, entitled to performance, distinguishing *Knatchbull v. Grueber*.⁷

The doctrine "*caveat emptor*" applies to a representation that the property being sold stands on a very fine bed of anthracite coal, and the purchaser must inquire to what extent the coal has already been worked, he having known of some working.

In *Jefferys v. Fairs*,⁸ Bacon, V.-C., says: "The defendants contend that specific performance cannot be granted, and that they are entitled to repudiate the contract because the plaintiff has not proved the existence of the mine under the demised property. I have no doubt, however, that mining agreements are not dependent for their efficacy upon any such rule as that. What is the bargain between the parties? . . . All that it amounts to is a license to enter and search for the vein of coal, and make what they could of it. It has been said that a lease of minerals amounts to a sale and purchase out and out. In whatever sense that may be true, it can have no application to payment of a dead-rent, which is reserved in respect of this license to enter and search, and is payable whether there is a vein or not. . . . There is no analogy whatever to the case of a man selling shares which are utterly worthless, or a cargo of corn which had no existence. There is nothing like fraud on the part of the lessor. The defendants have, in fact, got all they bargained for, which was the chance of finding the vein of coal under the particular pro-

⁵ (1865) 2 H. & M. 354.

⁶ (1865) 34 Beav. 416.

⁷ (1817) 3 Mer. 124.

⁸ (1876) 4 Ch. D. 452.

perty. And a whole series of authorities shews that that is the true way of looking at transactions of this kind. It is true that in some of the cases there was an executed lease, but that is an immaterial circumstance. The important point is, whether the defendants got what they contracted for," and specific performance was decreed.

Morgan v. Worthington.⁹ A., to whom the owner of a quarry had agreed to grant a lease, agreed "on behalf of himself and all persons interested to sell the quarry" to B.; that the lease agreed to be granted by the lessor should be granted as B. might direct. B., having refused to complete the purchase, A. brought an action for specific performance, and in his statement of claim stated his agreement with the owner of the quarry, as well as the memorandum of agreement with B., and alleged that B. was aware of the nature of A.'s interest in the quarry, and had accepted the title. B. demurred, on the ground that the memorandum was not sufficient within the Statute of Frauds.

Held, that the memorandum was sufficient, but that a defence founded on the Statute of Frauds could not, since the Judicature Act, be raised by demurrer.

In *Bogart v. Patterson* ¹⁰ the defendant, who had some interest in gold lands, having discovered the owner of an outstanding title, employed the plaintiff to buy up the same, agreeing to give the plaintiff one-quarter of the land for his trouble on his paying one-quarter of the consideration, and to re-convey to the owner of such title another one-quarter part. The title having been bought up, the defendant did re-convey quarter to the owner, but refused to carry out the agreement with the plaintiff.

It was held, that the agreement was such as this Court would specifically perform, and decreed the same accordingly with costs.

Cases in Which Specific Performance Not Decreed. In Nova Scotia, parol representations made previous to the written contract are taken into consideration, and if they are material, and the defendant entered into the contract on the faith of them, the contract will not be enforced, although plaintiff did not know them to be untrue.¹

Where an offer in writing was made, although not so stated, on the basis of a term of credit spoken of between the parties prior to the offer being made, and it was accepted in writing as of a cash offer, it was held that the Court would not enforce it.²

⁹ (1878) 38 L. T. N. S. 443.

² *Omnium S. Co. v. Richardson*,

¹⁰ (1868) 14 Grant, 624.

(1884) 7 O. R. 182.

¹ *Thomson v. Longard*, R. E. D.

A letter containing an offer written "without prejudice," means, "I make you an offer; if you do not accept it, this letter is not to be used against me." But when the offer is accepted, the privilege is removed.³

In *Walker v. Jeffery*,⁵ Wigram, V.-C., said: "*Heaphy v. Hill*,⁶ and *Watson v. Reid*⁷ are direct authorities that if one of two parties concerned in a contract respecting lands, gives the other notice that he does not hold himself bound to perform, and will not perform, the contract between them; and the other contracting party, to whom the notice is so given, makes no prompt assertion of his right to enforce the contract, equity will consider him as acquiescing in the notice, and abandoning any equitable right he might have had to enforce the performance of the contract, and will leave the parties to their remedies and liabilities at law."

In *Price v. Griffith*,⁸ Knight Bruce, L.J., said:⁹ "Cases may be conceived where a person who has contracted to convey more than it is in his power to convey, ought to be decreed to convey what he can, either with or without compensation, to the vendee for such part of the subject matter of the contract as the vendor is unable to convey. But a lease of an undivided interest in a colliery is a very different thing from a lease of a whole colliery; and, in this case, there is no evidence of improper conduct, or misrepresentation, or of the defendant G. having held himself out as capable of contracting for the whole, or, in fact, any other circumstance constituting a ground for a decree as to one undivided share alone."

Williamson v. Wootton,¹⁰ Kindersley, V.-C., p. 214: "Both parties seem to have conceived that the way to work it out was by a conveyance of the surface, reserving the fee simple of the mines to the vendor, and an agreement for a lease of the mines with proper stipulations. Then the question is, what are those stipulations to be? In that state of things I could not force that lease on either party."

The tendency of the Courts to restrict the exercise of its jurisdiction in enforcing specific performance of contracts to those cases in which the plaintiff has been prompt in seeking his equitable

³ (Ib.) Following re River Steamer Co., Mitchell's claim, (1871) L. R. 6 Ch. 827, 832.

⁵ (1842) 1 Ha. 348.

⁶ (1824) 2 Sim. & Stu. 29.

⁷ (1830) 1 Russ. & My. 236.

⁸ (1851) 1 DeG. M. & G. 80.

⁹ P. 24.

¹⁰ (1855) 3 Drew. 210.

remedy referred to in *Southcomb v. Exeter*,¹ is especially applicable to mining contracts.²

After a delay of four years specific performance will not in general be decreed in New Brunswick.³

*Alloway v. Braine*⁴ was a case in which a person agreed to sell his share in a mine to another, and four months' afterwards agreed to sell it to a third person, who paid part of the purchase money. In the following month the vendor, having given notice of repudiation to the purchaser in the first contract, conveyed to the second purchaser. No steps were taken by the first purchaser for 10½ years, when he instituted proceedings against the second purchaser alone to have a declaration that he was a trustee and for a conveyance; and it was held by Romilly, M.R., that the right was barred by lapse of time and laches.

In *Sharp v. Wright*,⁵ an agreement for a lease provided, *inter alia*, for payment at specified rate "for all coals drawn out of the said seams before mentioned," and "a shaft rent" at a specified rate. Also "the rent to be paid quarterly; the lease to be for a term of twenty-one years." In an action by the lessee against the lessor for specific performance of the agreement and the grant of a lease in accordance therewith, Romilly, M.R., says:⁶ "On the construction put on this agreement on behalf of the plaintiff, he was not bound to work at all during the twenty-one years, unless he found it profitable; but I think the construction is that the plaintiff was bound to work it immediately and continuously. . . . The case is this: The agreement expressly directs how the mine is to be worked, and the rent is made payable quarterly, clearly inferring that it was to be worked immediately." ⁷ And ⁸ "it is not necessary to refer to the cases on this subject, but I think that *Southcomb v. The Bishop of Exeter*,⁹ goes much further than is necessary to enable the Court to say, in this case, that the bill must be dismissed with costs."

*Walters v. Morgan*¹⁰ was an action by the intended lessee in which specific performance was refused of an agreement for a lease of minerals, where the intended lessee, being better informed than

¹ (1848) 6 Hare, 213.

² *Sharp v. Wright*, (1859) 28 Beav. 150.

³ *Purvis v. Hume*, (1856) 3 All. 299.

⁴ (1859) 26 Beav. 575.

⁵ (1859) 28 Beav. 150.

⁶ At p. 152.

⁷ *Ib.*

⁸ At p. 153.

⁹ (1847) 6 Hare, 213.

¹⁰ (1861) 3 DeG. F. & J. 718.

the lessor as to value, brought to the lessor a lease ready prepared, without previous negotiation as to the details of it, and induced the latter to sign it, saying he might trust to the proposed lessee for making a fair allowance if the minerals turned out more valuable than was supposed.

Campbell, L.C., expressly concurring in the doctrine of concealment and misrepresentation as laid down by Lord Thurlow in *Fox v. Mackreth*,¹ and qualified by Lord Eldon in *Turner v. Harvey*,² said:³ "There being no fiduciary relation between vendor and purchaser in the negotiation, the purchaser is not bound to disclose any fact exclusively within his knowledge which might reasonably be expected to influence the price of the subject to be sold. Simple reticence does not amount to legal fraud, however it may be viewed by moralists. But a single word, or (I may add) a nod or a wink, or a shake of the head, or a smile from the purchaser intended to induce the vendor to believe the existence of a non-existing fact, which might influence the price of the subject to be sold, would be sufficient ground for a court of equity to refuse a decree for a specific performance of the agreement.⁴ So *a fortiori* would a continuance on the part of the purchaser, better informed than the vendor of the real value of the subject to be sold, to bring the vendor into an agreement without giving him the opportunity of being fully informed of its real value, or time to deliberate and take advice respecting the conditions of the bargain."

In *Lancaster v. De Trafford*,⁵ Romilly, M.R., said:⁶ "Unless, therefore, this boundary is settled by arrangement, the Court cannot define the mineral area to be inserted in the lease. It was not settled, and I cannot, therefore, enforce the specific performance of a contract in which the subject matter is not ascertained, and not capable of being ascertained, except by an arbitrary selection of certain limits."

In *Higgins v. Samels*,⁸ Sir W. Page Wood, V.-C., says:⁹ "There was a distinct representation of fact which the plaintiff, though he did not believe it to be false, made without seeking the further information which was within his reach, and which would have shown him that the statement was not true. After this, notwithstanding

¹ (1789) 1 Ves. Jr. 69.

² (1821) Jac. 169.

³ At p. 723.

⁴ This statement of the law is cited with approval in *Turner v.*

Green, (1895) 2 Ch. 209, by Chitty, J.

⁵ (1862) 31 L. J. Ch. (N. S.) 554.

⁶ At p. 556.

⁸ (1862) 2 J. & H. 461.

⁹ At p. 469.

the inspection made by the defendants, it would not be right for this Court to enforce performance."

Phillips v. Homfray,¹⁰ The owners of a colliery entered into a contract with an adjoining landowner for the purchase of his estate, without disclosing the fact, of which he was ignorant, that they had, without authority, gotten a considerable quantity of coal from under it.

It was decided, affirming the decision of Stuart, V.-C., that the Court would not enforce the contract at the suit of the purchasers, though the sale was not shown to be at an under value.

Lord Hatherley, L.C., said:¹ According to the principle of *Martin v. Porter*,² the vendors are entitled to be paid for the coal wrongfully severed a sum much greater than its value while ungotten. I do not think it possible for a person in any case secretly to subtract from his neighbor's property, and then to bind him by an agreement for the sale of the property without communicating to him the fact of the encroachment.

Fraudulent concealment is a defence to an action for specific performance, but where there is no duty to make disclosure, mere silence will not amount to fraudulent concealment. *Aliud est celare, aliud tacere*. While the party deceived may by acquiescence²² waive the fraud on the principle that *vigilantibus non dormientibus jura subveniunt*, it is no answer to a charge of fraud that the party deceived had the means of discovering the truth. No man can complain that another has too implicitly relied on the truth of what he himself has stated.²³

In *re Luddy's Trustee v. Peard*,³ Kay, J., says: "Taking the familiar illustration, if the agent becomes from his employment aware of the existence of a coal mine under his employer's land, of which the employer is ignorant, though he could not purchase from the employer without disclosing that, it was said he might do so from his trustee in bankruptcy. I entirely dissent from that argument. The test is whether the purchase would be a benefit obtained to the prejudice or at the expense of the client."

Rescission. A contract cannot be rescinded where the purchaser does not rely on the vendor's statements, but tests their accuracy, and after having knowledge, or means of knowledge, declares his satisfaction as to the correctness of the statements. If, on the treaty for the

¹⁰ (1871) L. R. 6 Ch. 770.

¹ At p. 780.

² (1839) 5 M. & W. 351.

²² *Vigers v. Pike*, (1840) 8 Cl. & F. 562.

²³ *Reynell v. Sprye*, (1852) 1 De G. M. & G. 710; *Kisch v. Central Ry. Co. of Venezuela*, (1867) L. R. 2 E. & I. 99.

³ (1886) 33 Ch. D. 520.

sale of property, the vendor makes representations which he knows to be false, the falsehood of which the purchaser has no means of knowing, but upon which he relies, the contract will be rescinded, though it may not contain the misrepresentations, but not without the clearest proof of fraudulent misrepresentations, and that they were made under such circumstances as show that the contract was based on them. If a purchaser, choosing to judge for himself, does not avail himself of the knowledge or means of knowledge open to him or his agents, he cannot be heard to say he was deceived by the vendor's representations, the rule being *caveat emptor*, and the knowledge of his agents as binding on him as his own knowledge.

In *Attwood v. Small* ⁴ a fault in a mine was concealed, being blocked up with rubbish. The purchaser (or his agent), before inspecting the mine, had asked: "Is there any fault in the mine?" to which the vendor had answered, "God knows; if you go down you will see all that I know." On seeing the rubbish which concealed the fault the purchaser asked, "What is the meaning of this rubbish; why do you not get the coal found in that direction?" And was answered "We do not wish to work in that direction; we have got quite coal enough." It appears that the purchaser would have been entitled to relief had he not subsequently waived his right by his conduct.⁵

Misrepresentations, to constitute sufficient grounds for setting aside a purchase, must be material, as being of such a nature as, if true, to add to the value, must not be evidently merely conjectural statements.

Where advertisements for the sale of shares in a mine had been issued containing unfounded statements, but the purchaser had not relied upon them, and had had opportunities of judging of their accuracy; it was held by the Lords Justices that he was not entitled by reason thereof to have the contract rescinded.⁶

In suits to rescind contracts for fraud, particularly where the subject is of variable value, it is the duty of the complainant to act at the earliest possible period.⁶¹ Lord Justice Knight Bruce says: ⁷ "The defendants, whether admitting or denying any misrepresentation, are entitled to the application and protection of the principles on which *Dyer v. Hargrave* ⁸ was decided by Sir W. Grant. It makes no difference in substance for the present purpose, at least, in the

⁴ (1838) 6 C. & F. 232.

⁵ *Small v. Attwood*, (1838) You. 407, at p. 490; (1838) 6 Cl. & F. 232, at p. 357.

⁶ *Jennings v. Broughton*, (1853)

5 De G. M. & G. 126.

⁶¹ *Ib.*

⁷ At p. 131 (*ib.*).

⁸ (1805) 10 Ves. 505.

plaintiff's favor, that *Dyer v. Hargrave* was a case of specific performance and this a rescinding bill. I desire to be understood as at once giving my opinion against the plaintiff with regard to every 'object of sense' which, on either visit to the mine, he may, as an educated man of ordinary intelligence, having the use of his eyes, his mind on the alert, and his interest awakened, be reasonably taken (whether much or little of a workman or a philosopher) to have observed; and nothing that I shall say is to be received or interpreted as extending to any such matter."

Lapse of time and omission to apply promptly may render it impossible to obtain rescission. In *Price v. North*⁹ the Court said:¹⁰ "One reason is that the purchaser, upon the faith that he has obtained the benefit of his contract, may have laid out large sums of money on the premises, and to say that in four years afterwards the Court might alter the interest in the property would be to say that the Court might do it after any indefinite time."¹¹

In *Bell v. Macklin*,² Strong, J., said:³ "The plaintiff having taken a conveyance, and having no contract entitling him to compensation for deficiency,⁴ is restricted to such relief as he may be able to obtain on the covenants for title contained in his purchase deed, or to relief by way of rescission for fraud"; and⁵ "in the late case of *Brownlie v. Campbell*,⁶ Lord Selborne and Lord Blackburn both lay it down most distinctly that after a conveyance of land has been executed, nothing in the way of misrepresentation, short of actual positive fraud, will warrant a judicial rescission between vendor and purchaser.

What amounts to actual fraud in the way of misrepresentation is hardly susceptible of abstract definition. It certainly does appear from the authorities, that, as regards executory contracts, innocent misrepresentation may be a ground for rescission;⁷ while an action for deceit is not maintainable unless there is actual moral fraud, as is well demonstrated in the judgment of this Court in the case of *Petrie v. Guelph Lumber Co.*"⁸

⁹ (1837) 2 Y. & C. 620.

¹⁰ At p. 627.

¹¹ See also *Cottingham v. Cottingham*, (1885) 11 A. R. 624.

² (1887) 15 S. C. R. 576.

³ P. 579.

⁴ *Jolliffe v. Baker*, (1883) 11 Q. B. D. 255.

⁵ At p. 581.

⁶ (1880) 5 App. Cas. 925.

⁷ *Arkwright v. Newbould*, (1881) 17 Ch. D. 320; *Reese River Mining Co. v. Smith*, (1869) L. R. 4 H. L. 64; *Redgrave v. Hurd*, (1881) 20 Ch. Div. 1.

⁸ (1885) 11 S. C. R. 450; *Smith v. Chadwick*, (1884) 9 App. Cas. 187; *Derry v. Peek*, (1888) 14 A. C. 337.

As regards the defence to an action for specific performance, which depends on principles altogether different from an action for rescission, it has long been settled that honest misrepresentation, free from all taint of fraud, will constitute a defence. The case of *Brownlie v. Campbell* (*supra*), however, warrants the proposition that whatever may be the rule applicable to other executed contracts, a contract for sale of land, executed by conveyance, and especially when the conveyance is preceded by a preliminary agreement in writing,⁹ is governed by different principles from those which regulate the same relief as applied to an executory contract requiring something to be established beyond mere innocent misrepresentation, namely, that there was either conscious falsehood on the part of the person making the representation, or that it was made by a person who ought to have known the fact, to one who had a right to rely on the accuracy of his statement, recklessly, and without caring whether it was true or not.¹⁰ In other words, a party who seeks to set aside a conveyance of lands executed in pursuance of a contract of sale for misrepresentation, relating to a matter of title, is bound to establish fraud to the same extent and degree as a plaintiff in an action for deceit.¹¹ In addition to the falsehood of the representation, something more must be proved.¹² In the words of Sir W. P. Wood, V.-C., in *Barry v. Croskey*,¹ it must also be established "that such false representation was made with the intent that it should be acted upon by the person to whom it was made. And, further, that such person did act upon it accordingly, and from so doing suffered an injury, which was an immediate and direct, and not a remote, consequence of the representation."

After a contract is perfected by conveyance the purchaser is confined to his remedy upon the covenants, or, in a proper case, where he applies promptly, to a rescission of the contract.²

To obtain rescission of an executed contract a clear case of fraud must be established.³

In *May v. McArthur*,⁴ relief was given against three defendants jointly and severally.

⁹ *McCulloch v. Gregory*, (1855) 1 K. & J. 286.

¹⁰ *Edgington v. Fitzmaurice*, (1884) 29 Ch. D. 459.

¹¹ See and cf. *Cameron v. Cameron*, (1887) 14 O. R. 561, p. 580-5.

¹² P. 582.

¹ (1861) 2 J. & H. 1.

² *Follis v. Porter*, (1865) 11 Grant, 442; *Penrose v. Knight*, (1879) Cassels Dig. 777.

³ *Hutchinson v. Calder*, (1885) Cassels Dig. 786.

⁴ (1884) 20 C. L. J. 248; 4 C. L. T. 336.

In New Brunswick a person induced by fraud to enter into a contract cannot, after he has acted under it, so that the parties can no longer be placed in *statu quo*, avoid the contract.⁵

Where parties have entered into an illegal contract, either of them may rescind it if executory,⁶ but the election so to do must be notified to the other party in due time.⁷

After rescission, the contract is at an end, and all rights thereunder and remedies thereon end therewith, except that in case the default is by the purchaser, damages for the breach of the contract may be sought by the vendor.¹¹

Cases in Which Rescission Was Decreed. In *Macbryde v. Weekes*,⁸ there was a contract, dated 4th October, to grant a mining lease, and no time was mentioned for completion. On 10th December following the intending lessee notified the intending lessor to the following effect: "I hereby require you to perform and complete, within one calendar month from the day of the date hereof, your part of the agreement in writing, entered into by you with me, bearing date the 4th of October last, and signed by you; and I hereby offer to perform my part of the said agreement within the time aforesaid, on you performing your part thereof. And I hereby give you notice that, in default of your performing your part of the said agreement within the period aforesaid, I shall consider the said agreement at an end."

Sir John Romilly, M.R.,⁹ said: "This, in my opinion, is one of those cases in which time was, from the nature of the property, necessarily of the essence of the contract, in this sense, and to this extent, that it was incumbent on the owner to use his utmost diligence to complete his part of the contract, and that if he failed in so exerting himself, the defendant might decline having anything further to do with the matter. The subject of the contract was in part a lease for working a mine; which is a trade of a fluctuating character, and obviously coming within the principles laid down in the cases cited of *Parker v. Frith*,¹⁰ *Wright v. Howard*,¹ *Coslake v. Till*,² and *Walker v. Jeffreys*,³ and several other cases."

⁵ *Lloyd v. Union Ins. Co.*, (1875) 2 Pug. 498.

⁶ *Taylor v. Bowers*, (1876) 1 Q. B. D. 291, C. A.

⁷ *Palyart v. Leckie*, (1817) 6 M. & S. 290.

¹¹ *Icely v. Grew*, (1836) 6 Nev. &

M. 467; *Fraser v. Ryan*, (1897) 24 A. R. 441, 444, per Boyd, C.

⁸ (1856) 22 Beav. 533.

⁹ At p. 539.

¹⁰ (1819) 1 Sim. & S. 199 n.

¹ (1823) 1 Sim. & S. 190.

² (1826) 1 Russ. 376.

³ (1841) 1 Hare, 341.

⁴ "What constitutes a reasonable notice, and a reasonable time to be fixed in it, must depend upon the contract, and the circumstances of each case"; and the notice above set forth was held justifiable and sufficient.

In *Gibbons v. Cozens*,⁴¹ the contract for sale provided for payment of the purchase money on the 1st June, 1888. The defendant paid part and gave security for payment of the balance within a period which expired before this action was brought. The plaintiff realized on the security, and on 2nd March, 1896, recovered judgment against the defendant for the balance, about £1,000, upon the promise to pay contained in the agreement. The defendant had been in possession of the property and had allowed taxes to a large amount to accumulate. On 9th April, 1897, plaintiff served defendant with notice that unless the balance, with interest, was paid by 29th May, 1897, defendant's right under the contract would be at an end, and his interest in the land forfeited, and declaring time to be made of the essence of the contract. The defendant had paid no further sum in respect of the contract. The action was brought for a declaration that the defendant's right to the land was at an end, and to have the registration of the contract vacated. It was held that the judgment recovered by the plaintiff did not affect the right to terminate the contract in case of inability to recover on the judgment, and that the plaintiff was not bound to return to the defendant payments made on account of the purchase money, as a condition or a result of cancelling the contract. The deposit as well as the payments on account, are looked upon as a guaranty that the purchaser will complete his contract, and are forfeited if he does not do so.

Upon the question of whether the defendant was entitled to require the plaintiff to make out a title to the lease in question, the contract being silent on the subject,⁵ the Master of the Rolls says: "As a general proposition of law, in the absence of contract or waiver, this is not, and cannot be disputed."

Time may be of the essence of a contract, even without any express stipulation, if it appears that such was the intention.⁵¹

In *Perens v. Johnson*; *Johnson v. Perens*,⁶ where the solvent partners in a coal mine, before the sale by a sheriff of the share of

⁴ At p. 543.

⁴¹ (1898) 18 C. L. T. 179, per Street, J.

⁵ See p. 545 (ib.).

⁵¹ *Oldfield v. Dickson*, (1889) 18 O. R. 188; see *Crossfield v. Gould*, (1883) 9 A. R. 218; *Dainty v. Vidal*, (1886) 13 A. R. 47.

⁶ (1857) 3 Sim. & G. 419.

an insolvent partner, on an execution issued against him, removed the gear and prevented access to the coal mine through the shaft, and removed ironstone, which had been newly raised, so as to prevent it being known that the seam of coal was almost reached, and then bid for and became the purchasers of the share under execution, and a few day's afterwards, on one day's working, discovered the seam of coal, it was held by Sir John Stuart, V.-C., that the purchase must be set aside, and on repayment of the purchase money they were declared to be trustees of the share for the partner, although he had, without notice of the conduct of the purchasers, received the balance of the purchase money from the sheriff.⁷

Where one of the articles of a contract provided that the estate as to the extent of acreage should be taken to be conclusively shown by certain deeds, Lord Cairns, L.C., for the Court, held that this was merely a conveyancing condition as to identity, and that, coupled with the representation as to acreage (which was that the estate contained 1,530 acres, when, as a fact, it contained less than 1,100 acres), it did not estop the purchaser from rescinding on the ground of deficiency in acreage.⁸

Where the misdescription, although not proceeding from fraud, is, in a material and substantial point, so far affecting the subject matter of the contract that it may reasonably be supposed that, but for such misdescription, the purchaser might never have entered into the contract at all; in such case the contract is avoided altogether, and the purchaser is not bound to resort to a clause of compensation.⁹

Delay and other circumstances may be sufficient to prevent rescission.¹⁰

Where the vendor sells property, describing it as of a certain area, and the price is fixed on that supposition, and it afterwards turns out to exceed that area, he cannot, after conveyance, have rescission or payment of the difference.¹

Notwithstanding conveyance the parties may resort to any

⁷ See also *Crawshay v. Collins*, (1808) 15 Ves. 218; *Featherstonhaugh v. Fenwick*, (1810) 17 Ves. 298; *Wilson v. Greefwood*, (1818) 1 Swanst. 471; *Goodman v. Whitcomb*, (1820) 1 J. & W. 589.

⁸ *Aberaman Iron Works v. Wickens*, (1868) 4 Chy. 101.

⁹ *Flight v. Booth*, (1834) 1 Bing.

N. C. 377, per Tindal, C.J.; *Price v. North*, (1837) 2 Y. & C. 620.

¹⁰ *Okill v. Whittaker*, (1847) 1 DeG. & S. 83.

¹ *Okill v. Whittaker*, (1847) 2 Phil. 340; but see *Baxendale v. Seale*, (1854) 19 Beav. 601; *Durham v. Legard*, (1865) 34 Beav. 611.

provision for compensation for a misstatement contained in the contract.²

Relief has been granted because more or less land passed than was contracted for, e.g., where the sale was of a strictly defined area, and in laying off the quantity by measurement, the surveyor erroneously included a larger area by metes and bounds; and where part of the land contracted for by a particular was omitted.³

And where the conveyance comprised more land than the vendor intended to deal with, as where the sale was of property A, and by mistake part of B was conveyed as well as A; ⁴ and where the mistake was caused by even an innocent misrepresentation of the party, or an agent of the party, seeking to take advantage of it, and there has been no negligence on the part of the other party.⁵

In *Gibbs v. David*,⁶ *Malins, V.-C.*, following *Boehm v. Wood*,⁷ appointed a receiver until the hearing, in a suit by a purchaser of a coal mine, to rescind the contract on the ground of fraudulent misrepresentation, it being essential that the mine should be kept in a going state. The application was made by the purchaser, who was in possession of the colliery.

In *Wrayton v. Naylor*,⁸ *Strong, C.J.*, says: "Where a vendor repudiates the contract, and distinctly refuses to make out a good title, after having been repeatedly requested to do so by the purchaser, . . . the purchaser is not bound to wait, but may at once treat the contract as rescinded. When, however, the vendor merely delays to show a good title, and time is not either by the terms of the contract or from the circumstances of the case, of the essence of the agreement, the purchaser is required to wait a reasonable time for a title to be shown."

In New Brunswick it is the duty of the vendor of lands to prepare and tender the conveyance. Where the agreement was to give

² *Cann v. Cann*, (1850) 3 Sim. 447; *Phelps v. White*, (1880) L. R. 5 Ir. 318; *Palmer v. Johnston*, (1884) 13 Q. B. D. 351; *Cottingham v. Cottingham*, (1885) 11 A. R. 646, per *Osler, J. A.*

³ *Lenty v. Hillas*, (1858) 2 DeG. & J. 110.

⁴ *Tyler v. Beversham*, (1673) Rep. temp. Finch, 80.

⁵ *Carpmael v. Powis*, (1847) 11 Jur. N. S. 158; (1846) 10 Beav. 36;

Garrard v. Frankel, (1862) 30 Beav. 445; *Harris v. Peperell*, (1867) L. R. 5 Eq. 1; *Bloomer v. Spittle*, (1872) L. R. 13 Eq. 427; *Paget v. Marshall*, (1884) 28 Ch. D. 255; *Gun v. McCarthy*, (1883) 13 L. R. Ir. 304; *Jones v. Clifford*, (1876) 3 Ch. D. 179, 791.

⁶ (1875) L. R. 20 Eq. 373, 377.

⁷ (1880) 2 Jac. & W. 236.

⁸ (1895) 25 S. C. R. 295.

⁹ At p. 298.

a clear title and an incumbrance was not removed at the time limited for giving the deed, it was held that the purchaser could treat the contract as rescinded, and recover his deposit, though he knew of the incumbrance at the time of the sale.¹⁰

In Nova Scotia an agreement for sale of lands, good under the Statute of Frauds, may be rescinded before breach of it, by parol, provided there is a total abandonment of the whole contract, and not merely a partial waiver of some of its terms; nor does the validity of such rescission depend on the existence of a consideration.¹

The purchaser is entitled to a return of his payments.²

In order to recover back money paid under an agreement for sale of land, on the ground of failure of consideration, plaintiff must give evidence of the terms of the agreement to entitle him to recover.³

In Northrup Mining Co. v. Dimock,⁴ the purchasers of a mining property, on account of fraud between the vendors and promoters of the plaintiff company, were held entitled in Nova Scotia to recover back the proportionate amounts contributed by them to make up the sum of \$30,000 received by the defendant and his associate.

In an Australian case, shares in a mining company having been purchased for cash on a Thursday, and not paid for on Saturday morning following, application for the completion of the purchase having in the meantime been made, the seller rescinded the contract and rejected subsequent offers of payment. In an action by the purchaser against the seller for damages for breach of contract, the jury found for the defendant. Held, on motion for new trial, that the verdict ought not to be disturbed, as the jury were justified in finding that a reasonable time had elapsed for the completion of the contract before its rescission.⁴¹

Rescission of course cannot be had if the parties cannot be placed in *statu quo*.⁴²

Cases in Which Rescission Not Granted. In Ernest v. Vivian,⁵ Kindersley, V.-C., said:⁶ "The subject matter of this suit

¹⁰ Taylor v. Burnett, (1880) 20 N. B. R. 165; 4 Pug. & Bur. 165.

¹ Barclay v. Proas, (1878) R. E. D. 317.

² Campbell v. Henderson, (1857) 2 Thom. 335.

³ McDonald v. McDonald, (1853) James, 41.

⁴ (1895) 27 N. S. R. 112.

⁴¹ Muston v. Blake, (1872) 11 N. S. W. S. C. R. (L.) 92.

⁴² Ladywell Mining Co. v.

Brookes, (1887) 35 Ch. D. 400; The Cape Breton Case, (1885) 29 Ch. D. 795; in Appeal, Bentinck v. Fern, (1887) 12 App. Cas. 652; Re Ambrose Lake Tin and Copper Mining Company, (1880) 14 Ch. D. 390; Great Luxembourg Railway Co. v. Maguay, (1858) 25 Beav. 586; Lindsay Petroleum Co. v. Hurd, (1874) L. R. 5 P. C. 221.

⁵ (1864) 33 L. J. Ch. 513.

⁶ At p. 517.

is the right to mines. Mining operations are of a particular character; they are an uncertain and speculative and hazardous adventure. That observation applies more especially to mines unopened or recently commenced, the expense of which is only compensated by a long course of successful working. It is true, as to every mine, that the preliminary outlay, though the heaviest, is not the only one, for a large capital and an expenditure to a serious amount is necessary to meet the exigencies of the case. There is also a continual and an increasing risk, for a mine profitable to-day may to-morrow become worthless. Similar observations have been made by other Judges. Now, if a person has a just right to mines of which he is not in possession, as against those who are in possession of and working them, and if he claims to be the rightful owner (the person in possession being aware of his rights, or supposed rights), if such owner, being prevented by fraud or concealment, stands by for a long period of time whilst those in possession are working the mines, the Court will not lend him any assistance. Whatever remedy he may have at law, he can have none here, because it is not equitable to allow him to wait until it is ascertained that the persons in possession have succeeded or may have been ruined; and if the subject result in profit to ask to put that in his pocket; if in loss, to repudiate the loss. It is not necessary, even if possible, to prove whether he acted from premeditated design or carelessness."

Where a trader sold a solvent business to a limited company with a nominal capital of 40,000 shares of £1 each, the company, consisting only of the vendor, his wife, a daughter and four sons, who subscribed for four shares each, all the terms of sale being known to and approved by the shareholders, it was held that the liquidator suing in the name of the company, was not entitled to rescission of the contract for purchase.⁶¹

In *Dicconson v. Talbot*,⁷ Sir E. Mellish, L.J., says, at p. 38: "Ever since *Howard v. Duncan*,⁸ it has been considered as settled law that a sale cannot be impeached merely on the ground that the purchaser is a tenant for life, whose consent was requisite to the sale, and we should be doing wrong if we were to throw the slightest doubt upon it."

Where a person, knowing that he has no title to the property, or to a material or essential part of it, and, knowing that the person with whom he is contracting is perfectly ignorant of the title, con-

⁶¹ *Salomon v. Salomon*, (1897) A. C. 22, called "The one-man company case."

⁷ (1870) L. R. 6 Chy. 2.

⁸ (1821) 1 T. R. 81.

tracts to grant a lease, the lessee may, on the ground of fraud, rescind after completion, even though there has been no affirmative statement made as to the title.⁹

The absence of title to the minerals is an essential defect.¹⁰ If however, there are no minerals, the defect, so far from being essential, is not even material.¹

Promoters of Company. As to persons who purchase property and then create a company to purchase from them the property they have so purchased.²

The duties of a promoter, who purchases property with the intention of selling it to a company to be formed, are pointed out by Strong, C.J.,³ to include the obligations of selling for a price not exorbitant; concealing nothing that it was proper the directors of the company should know in order to form a fair judgment as to the value of the property; making no misrepresentations of facts material to the purchase; contracting through the medium of a board of directors who are entirely independent, comprised of persons who are free from the influence of the promoter, not mere instruments, subject to his dictation and subservient to his interests; and with such a board he must deal at arm's length.

⁹ See *Mostyn v. West Mostyn*, etc., (1876) 1 C. P. D. 145.

¹⁰ *Upperton v. Nicholson*, (1871) 6 Ch. 436.

¹ *Lyddal v. Weston*, (1739) 2 Atk. 19; *Martin v. Cotter*, (1846) 3 J. & L. 496, 509.

² See *Phosphate Sewage Co. v. Hartmont*, (1875) 5 Ch. D. 394; *Erlanger v. New Sombrero P. Co.*, (1878) 3 A. C. 1218; *Bagnall v. Carlton*, (1877) 6 Ch. D. 371. Where the owners of a mine worth £6,000 sold it to a trustee for an intended company for £24,000, to be paid in shares, it was held that the com-

pany, or the liquidator, could not make the owners of the mine account for the difference between the nominal value of their shares and the actual value of their interest in the mine. The remedy was stated by Cotton, L.J., to be a remedy of each purchaser of shares, if any such there were, who were deceived by the representations. In *re Ambrose Lake Tin and Copper Mining Co.*, (1888) 14 Ch. D. 390.

³ In *re Hess Manufacturing Company*, *Edgar v. Sloan*, (1894) 23 S. C. R. 667.

CHAPTER IV.

LICENSES.

A license properly passes no interest and does not alter or transfer property in anything, "but only makes an action lawful which without it had been unlawful."¹

An exploring license does not pass the property in the minerals found by a prospector exploring thereunder.²

Nature of. A license when coupled with an interest is not revocable, but as pointed out in *Doe v. Wood*³ the licensee has "no estate or property in the land itself, or any particular portion thereof, or in any part of the ore, metals, or minerals, ungot therein; but he had a right of property only, as to such part thereof as upon the liberties granted to him should be dug and got."

"That," says Abbott, C.J., "is no more than a mere right to a personal chattel, when obtained in pursuance of incorporeal privileges granted for the purpose of obtaining it."⁴

The right to dig mines is incorporeal, and quite different from the corporeal right to mines themselves.

Lindley, L.J., says in *Sutherland v. Heathcote*,⁵ "A right to work mines is something more than a mere license; it is a *profit a prendre*, an incorporeal hereditament lying in grant. The distinction between a license and a *profit a prendre* was pointed out in *Wickham v. Hawker*."⁶

Such a *profit a prendre* is an interest in land within the meaning of section 4 of the Statute of Frauds.⁶

¹ Per Vaughan, C.J., in *Thomas v. Sorrell*, (1706) Vaugh. 351.

² In *re Haven Gold M. Co.*, (1881) 20 Ch. Div. 160.

³ (1819) 2 B. & Ald. 739.

⁴ *Norway v. Rowe*, (1812) 19 Ves.

158; *Cheetham v. Williamson*, 4 East, 469.

⁵ (1892) 1 Ch. 483.

⁶ (1840) 7 M. & W. 78.

⁶ *Webber v. Lee*, (1882) 9 Q. B. D. 315.

Revocable or Irrevocable. In the classical case of *Wood v. Leadbitter*,³ Alderson, B., says:⁴ "A mere license is revocable; but that which is called a license is often something more than a license; it often comprises or is connected with a grant, and then the party who has given it cannot in general revoke it, so as to defeat his grant, to which it was incident. It may further be observed, that a license under seal (provided it be a mere license) is as revocable as a license by parol; and, on the other hand, a license by parol, coupled with a grant, is as irrevocable as a license by deed, provided only that the grant is of a nature capable of being made by parol. But where there is a license by parol, coupled with a parol grant or pretended grant, of something which is incapable of being granted otherwise than by deed, there the license is a mere license; it is not an incident to a valid grant, and it is therefore revocable."⁵

In *McKenzie v. McGlaughlin*,⁶ Rose, J., after stating the propositions of law established by *Wood v. Leadbitter*, says: "If the agreement set up by the defendant amounts to the grant of an easement or incorporeal right, then it should have been under seal, and not being under seal the license thus set up by the defendant is a parol license not incident to a valid grant, and hence is revocable; and the fact that it was for consideration and for a term certain would make no difference."⁷

In *Wallis v. Harrison*⁸ it was held that a parol license from A. to B. to enjoy an easement over A.'s land is countermandable at any time whilst it remains executory, and if A. conveys the land to another the license is determined at once without notice to B. of the transfer, and B. is liable in trespass if he afterwards enters upon the land.⁹

In New Brunswick it has been held that an easement cannot be created by parol, and that a parol agreement therefor would be determined by a conveyance to a third person by the party agreeing to give the easement.¹⁰

³ (1845) 13 M. & W. 838.

⁴ At p. 844.

⁵ *The King v. Inhabitants Horn-don-on-the-Hill*, (1816) 4 M. & S. 561; *McKenzie v. McGlaughlin*, (1885) 8 O. R. 115.

⁶ (1885) 8 Ont. R. 116.

⁷ *Ross v. Fox*, (1867) 13 Gr. 683;

Adams v. Andrews, (1850) 15 Q. B. 284.

⁸ (1838) 4 M. & W. 538.

⁹ *Ramsden v. Dyson*, (1865) L. R. 1 E. & I. App. 129; *Hyde v. Graham*, (1862) 1 H. & C. 593.

¹⁰ *Brewing v. Berryman*, (1873) 2 Pug. 115; *Gesner v. Cairns*, (1853) 2 Allen. 595.

In another New Brunswick case, *Gesner v. Cairns*,¹ it was held that a license from the Crown to dig minerals in granted land where the mines are excepted out of the grant will not justify an injury to the surface soil; and a parol license from the owner of the land in which the mines are excepted, to the grantee of the mines to enter and dig them, vests no estate in the licensee, and is revoked by a conveyance of the land to a third person.

It was also decided that such a license is no breach of the implied warranty in a deed of bargain and sale.²

In *Plimmer v. Wellington*,³ a license to construct a jetty at first revocable at will was held to have become irrevocable after the licensee had at the request of the licensor, expended a large sum for the intrusion of the jetty.

Lord Hobhouse says at p. 714: "The consequence is that Plimmer acquired an indefinite, that is practically a perpetual, right to the jetty for the purposes of the original license, and if the ground was afterwards wanted for public purposes, it could only be taken from him by the Legislature. An analogy to this process may be found in such cases as *Winter v. Brockwell*⁴ and *Liggins v. Inge*.⁵ These cases shew that where a landowner permits his neighbor to execute works on his (the neighbour's land), and the license is executed, it cannot be revoked at will by the licensor. If indefinite in duration, it becomes perpetual. Their Lordships think that the same consequence must follow where the license is to execute works on the lands of the licensor, and owing to some supervening equity the license has become irrevocable. " . . . The equitable right acquired by John Plimmer is an interest in land." In *Davies v. Marshall*,⁶ Williams, J., says: "I do not accede to his suggestion that *Winter v. Brockwell*, and *Liggins v. Inge*, are overruled or shaken by the judgment of Lord Wensleydale in *Wood v. Leadbitter*."

In *Morgan v. Lailey*,⁷ Richards, C. J., says that, "if the owner of the dominant tenement authorizes an act of a permanent nature to be done on the servient tenement, the necessary consequence of which is to prevent his future enjoyment of the easement, it is thereby extinguished. And, provided the authority is exercised, it is immaterial whether it was given by writing or by parol."

¹ (1853) 2 Allen, 595.

² Compare this with *Esquimaux & Nanaimo Ry. v. Bainbridge*, (1896) App. Cas. 561.

³ (1884) 9 App. Cas. 699.

⁴ (1807) 8 East, 308.

⁵ (1831) 7 Bing. 682.

⁶ (1861) 10 C. B. N. S. 711.

⁷ (1873) 33 U. C. R. 375.

In *City of Toronto v. Jarvis*,⁸ referring to a parol agreement authorizing the licensee to construct an underground drain through the property of the licensor, Strong, C.J., says at p. 242: "If it was a mere license it would have been revocable at first, but if not countermanded before money had been expended in the execution of the purpose for which it was conferred it would have by that expenditure become irrevocable, and therefore an interest in land" to which the Registry laws apply.⁹

In *Kerrison v. Smith*¹⁰ it was held that a licensee may have a right to maintain an action for breach of contract, if a license is revoked although there is a right to revoke the license.¹

Deed Necessary. To create or transfer an incorporeal inheritance affecting land a deed is said by Alderson, B., in *Wood v. Leadbitter*,⁷ to be indispensably requisite. The principle does not depend on the quality of the interest granted or transferred, but on the nature of the subject matter.

A right of common which is a *profit a prendre*, or a right of way which is an easement, can no more be granted or conveyed for life or for years without a deed than in fee simple.⁸

Assignability. In *Muskett v. Hill*⁹ it was held that a license to search for and raise minerals, and also to carry them away and convert them to the licensee's own use, passes an interest which is capable of being assigned.

The right to assign may, in some circumstances, be subject to the limitation pointed out by Spragge, V.C.,¹⁰ that where "the skill, knowledge, solvency, or other personal quality of a party with whom an agreement is made . . . may reasonably be considered as a material ingredient, there the contract can be performed by him alone; no assignee can claim the benefit of it."

The Distinction Between a Lease and a License was much discussed in *Lynch v. Seymour*.¹ The written instrument there in question under which the lessor claimed a lien on the goods of the lessees for a year's rent by virtue of 8 Anne, c. 14, s. 1, was by the

⁸ (1895) 25 S. C. R. 237.

⁹ See, however, *Chelsea Waterworks Co. v. Bowley*, (1851) 17 Q. B. 358.

¹⁰ (1897) 2 Q. B. 445.

¹ *Smart v. Jones*, (1864) 15 C. B. N. S. 717.

⁷ (1845) 13 M. & W. 842.

⁸ *Fentiman v. Smith*, (1803) 4

East, 107; *Hewlins v. Shippam*, (1826) 5 B. & C. 221; Co. Litt. 47 a.; *McKenzie v. McGlaughlin*, (1885) 8 Ont. R. 115; *Ross v. Fox*, (1867) 13 Gr. 683.

⁹ (1839) 5 Bing. N. C. 694.

¹⁰ In *Ross v. Fox*, (1867) 13 Gr. 691.

¹ (1887) 15 S. C. R. 341.

trial Judge, the late Mr. Justice Patterson, held to be a license. This was reversed by the Queen's Bench Divisional Court, who held it to be a lease. On appeal the Court of Appeal were equally divided, Oler, J.A., and Ferguson, J., holding it to be a lease; Hagarty, C.J., and Burton, J.A., a license. The Supreme Court were also equally divided, Strong, Fournier and Gwynne, J.J., holding it a lease; Ritchie, C.J., Henry and Taschereau, J.J., that the instrument was not a lease but a mere license. The instrument was an indenture expressed to be under the Short Forms of Leases Act, describing the parties as lessor and lessee respectively, and wherein the granting part was as follows: "Doth give, grant, demise and lease unto the said lessees the exclusive right, liberty and privilege of entering at all times, for and during the term of ten years from the first of January, 1879, in and upon (describing the land) and with agents, labourers and teams to search for, dig, excavate, mine and carry away the iron ores in, upon or under the said premises and of making all necessary roads. Also the right, liberty and privilege to erect on the said premises the buildings, etc., and to deposit on the said premises all refuse material taken out in mining the said ores." There was a covenant by the grantees not to do unnecessary damage, and a provision for taking away the erections made and for the use of timber on the premises, and such use of the surface as might be needed.

The grantees agreed to pay 25 cents for every ton of ore mined, in quarterly payments on certain fixed days, and it was provided how the quantity should be ascertained. It was also agreed that the royalty should not be less than a certain sum in any year. The grantees also agreed to pay all taxes, and not to allow intoxicating drinks to be manufactured on the premises, nor to carry on any business that might be deemed a nuisance. There were provisions for terminating the lease before the expiration of the term, and a covenant by the lessor for quiet enjoyment.

Sir W. J. Ritchie (345), "I think it is no lease but an exclusive license or liberty to enter on the premises mentioned in the instrument for the purpose of searching for and severing and carrying away the iron ores in, upon or under the said premises. The intention of the parties must be collected from the terms of the instrument. The language of the Statute under which it is claimed these goods are not liable to be taken, 8 Anne, c. 14, is as follows: 'No goods or chattels whatsoever lying and being in or upon any messuage, lands or tenements which are or shall be leased for life or lives for term of years at will or otherwise, shall be liable to be taken by virtue of any

execution.' And in the second clause, which applies to the fraudulent removal of goods different words are used: 'Any messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable.' I have been unable, after a most careful perusal and consideration of the document in question, to discover evidence of any intent of the parties that the lands in question shall be leased for a term of years. . . . Had the parties intended that there should be a demise of the land as well as the right to enter, search for, dig and work it might have been done in simple, plain language, which I fail to see in this deed. There is a very broad distinction between a privilege to search for and obtain minerals and a sole and exclusive occupation of the land itself. *Humphries v. Brogden*² very clearly shows that while the possession of the surface and the mine may go together, the two may be separated, and then they are as distinct as several closes, and in *Keyse v. Powell*,²¹ Lord Campbell, delivering the judgment of the Court, said: 'The surface and the minerals may be dissevered in title, and become separate tenements, as appears abundantly from the cases cited.'"³

Strong, J. (350), "The issue was tried before Mr. Justice Patterson without a jury, who gave judgment for the appellants, the execution creditors, holding that the instrument in question was not a lease but a license. This judgment was reversed by the Queen's Bench Division, and that decision was afterwards affirmed by the Court of Appeal, the Judges in the latter Court being equally divided in opinion, the Chief Justice and Mr. Justice Burton adopting the view of Mr. Justice Patterson, and Mr. Justice Osler and Mr. Justice Ferguson agreeing in opinion with the Queen's Bench Division. The defendants in the issue, the execution creditors, have now appealed to this Court. After some hesitation and fluctuation of opinion I have come to the conclusion that the view of the Queen's Bench Division and of the learned Judges who agreed with them in the Court of Appeal was correct, and that the appeal must be dismissed. There can be no question that if we are to construe this indenture as conferring upon the lessees an exclusive right of entry upon the land—that is, a right to enter exclusive of the grantor—that is, it amounts to a demise of the land itself." *Roads v. Trumpington*,⁴ *Cheetham v.*

² (1850) 12 Q. B. 739.

²¹ (1853) 2 E. & B. 144.

³ *Curtis v. Daniel*, (1808) 10 East,

273; *Humphries v. Brogden*, (1850)

12 Q. B. 739.

⁴ (1870) L. R. 6 Q. D. 56.

Williamson.⁵ (352). "As there is a real ambiguity in the expressions used the deed is to be construed most strongly *contra proferentem*, that is, against the grantor."

(354). "There is a plain distinction between this case and *Doe d. Hanley v. Wood*,⁶ for in that case the instrument which was held to be a license contained no words of demise, like those we find in this indenture, of the exclusive right of entry; had there been such words there can be little doubt, from what is said by Lord Tenterden, C.J., in giving the judgment of the Court, that the decision would have been different."

Armour, J., *Seymour v. Lynch*,⁷ bases his judgment on the canon stated in Bacon's *Ab. Lease K.* as follows, p. 476: "Whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession and the other come into it for such a determinate time, such words, whether they run in the form of a license, covenant, or agreement, are of themselves sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose."

In the Court of Appeal, Hagarty, C.J.O., says⁸ this canon of construction is of undoubted authority. In *Doe dem. Hanley v. Wood*,⁹ the deed there in question was held not to operate as a demise of the metals and minerals so as to vest in the lessee a legal estate therein during the term, upon the conditions mentioned in the deed, but only as a license to work and get the metals and minerals which might be found within the limits described. *Doe v. Wood* is referred to by Hagarty, C.J.O., in *Seymour v. Lynch*,¹⁰ as the most important case on the subject. Blackburn, J., points out in *Roads v. Trumpington*,¹ that in *Doe d. Hanley v. Wood*, the grantee might, perhaps, have had a right to bring ejectment for mines within the limits of his workings. The distinction between lease and license was also considered in *London & N. W. Ry. Co. v. Buckmaster*,² *Daniel v. Gracie*,³ in *re Stroud*,⁴ and in *Burnside v. Marcus*.⁵

Distinction Between Grant and License. As to the distinction between a grant and a license, see *Fitzgerald v. Firbank*,⁶ *Holford v. Bailey*,⁷ and *Carr v. Benson*.⁸

⁵ (1804) 4 East, 469.

⁶ (1819) 2 B. & Al. 724.

⁷ (1885) 7 Ont. R. 476.

⁸ (1887) 14 App. R. 742.

⁹ (1819) 2 B. & Ald. 724.

¹⁰ (1887) 14 App. R. 743.

¹ (1870) L. R. 6 Q. B. 64.

² (1875) L. R. 10 Q. B. 444.

³ (1844) 6 Q. B. 145.

⁴ (1849) 8 C. B. 502.

⁵ (1867) 17 U. C. P. 430.

⁶ (1897) 2 Ch. 96.

⁷ (1849) 13 Q. B. 426, at p. 446.

⁸ (1868) L. R. 3 Ch. Ap. 534.

Distinction Between License and Easement. A license must also be distinguished from an easement. As pointed out by Lord Cairns, L.J., in *Rangley v. Midland Railway Co.*:⁹ "There can be no such thing according to our law, or according to the civil law, as what I may term an easement in gross." And at p. 310: "Every easement has its origin in a grant expressed or implied. . . . There can be no easement properly so called unless there be both a servient and a dominant tenement."

The distinction is also illustrated by *Russell v. Harford*,¹⁰ where A. and B. were tenants under the same landlord of adjoining premises, and A. had a well upon his premises, from which B.'s premises were supplied with water by means of a pipe. It was held that B. had no easement or right of water, but merely a license from his landlord during his tenancy.

In *Chelsea Waterworks Co. v. Bowley*,¹ it was held upon the terms of a particular Statute there in question that a water company, in respect of their right to lay pipes for the purpose of carrying a stream of water through certain lands, had no interest in the lands, but only an easement over them.

In *re Benfield and Stevens*, *Benfield v. Stevens*,² Street, J., held that the deed there in question was a mere license to mine, not conferring an exclusive possession of the property, and a mere agreement for the sale and purchase of the ore when mined; and that the first mortgagee had no right of action for the money alleged to be due thereunder, but, at the most, only a claim for unliquidated damages for the wrongful removal of ore; and the licensee was not entitled to an interpleader order.

It was held in *Hamilton v. Dunlop*,³ that where the owner of lands is disposing to a singular successor or other person, if he reserves the "liberty of working the coal" in those lands, he must be taken to have reserved the estate of coal with which he stands invested by infestment."

The House of Lords refused to construe the words, "liberty of working the coal," as a mere license.

In *Haigh v. Jaggard*,⁴ the effect of a grant to A., B. and C., and their executors, of liberty to get the coal under particular closes, till all the coal should be gotten, was considered.

⁹ (1868) L. R. 3 Ch. Ap. 306, at p. 311.

¹⁰ (1866) L. R. 2 Eq. 507.

¹ (1851) 17 Q. B. 358.

² (1897) 17 O. Pr. R. 339.

³ (1885) 10 App. Cas. 813.

⁴ (1847) 16 M. & W. 525.

In the *Low Moor Co. v. The Stanley Coal Co.*,⁵ the effect of a deed of bargain and sale to H., his executors, administrators, and assigns of all the coal and minerals lying under certain closes was discussed.

When License Exclusive. The *prima facie* presumption is against a mining license being held exclusive. Vaughan Williams, J., says in *Sutherland v. Heathcote*,⁶ "Sometimes it has been said that such a license must be construed as non-exclusive unless it is expressed to be conclusive. This does not seem to me to be the law. The license must be construed like any other document according to intention."

In *Sutherland v. Heathcote*,⁷ a reservation of full and free liberty "to get the coal and minerals which should be found within certain land, was held not to give an exclusive right to work them."

Lindley, L.J., points out at p. 485, that an exclusive right can no doubt be granted; but such a right cannot be inferred from language which is not clear and explicit; and also at p. 485, "A grant in fee of liberty to dig ores does not confer on the grantee an exclusive right to dig them, even if the grant is in terms without any interruption by the grantor."

When not Exclusive. Licenses were held not exclusive in the following cases: In *re Haven Gold Mining Co.*,⁸ *Carr v. Benson*,⁹ *Newby v. Harrison*,¹⁰ *Ross v. Fox*,¹ and *Sinnott v. Seoble*.¹¹

What Covenants Run With License. In *Martyn v. Williams*,² it was held that a grant to the defendant of a license for 21 years, to dig, etc., for china clay, and to raise, get, and dispose of same to his own use, gave to the defendant "an incorporeal hereditament, a property and an estate capable of being inherited by the heir, and assigned to a purchaser or otherwise conveyed away. It is, says Martin, B., in truth a tenement and the conveyance of the land to the plaintiff during the existence of the term in the incorporeal tenement, was an assignment of the reversion within the Statute 32 Henry VIII. c. 34. It would follow that the rules as to covenants in leases running with the land are equally applicable to covenants in licenses to mines."?

⁵ (1876) 34 L. T. N. S. 186.

⁶ (1891) 3 Ch. 517.

⁷ (1892) 1 Ch. 475.

⁸ (1851) 20 Ch. Div. 151, per Jessel, M.R., 160.

⁹ (1868) 3 Ch. Ap. 524.

¹⁰ (1861) 1 J. & H. 393.

¹ (1867) 13 Gr. Ch. 687.

¹¹ (1884) 11 S. C. R. 571.

² (1857) 1 H. & N.

As to what covenants run with the license, see *Lord Portmore v. Bunn*,³ *Norval v. Pascoe*.⁴

Where A. agreed with B. to take a lease of B.'s iron ore at N. for forty years at a certain rent, and B. agreed to grant the lease, it was held that by the agreement for a lease, B. took not a mere license, but a right constituting a hereditament within the Statute 11 Geo. II. c. 10, in respect of which A. might sue him for use and occupation.⁵

Nature of Royalty. In *ex parte Hankey*⁶ is frequently cited as authority for the proposition that payments agreed to be made in respect of a license are in the nature of rent, but in that case the Vice-Chancellor says at p. 251, "In my opinion the true way of considering it is, as nothing more than a lease for a year to P. and B. with certain privileges annexed to it. Then considering it as a lease, which it was, because P. and B. had a right to occupy the soil, the consequence is, that the mortgagee, from the time he gave notice, was entitled to the rents."

In *Ward v. Day*,⁷ where by deed, B. granted to A. a license to search for and get all the pyrites which might be found in a certain part of a manor, for 21 years, at a yearly rent, a distress for arrears of rent was treated as illegal.⁸

Rent cannot be reserved by any person except the Crown, out of any incorporeal inheritance.⁹

Forfeiture. In *Roberts v. Davey*,¹⁰ the plaintiff had granted to defendant a license to dig and mine for ore, subject to a condition that if grantee should neglect to work the mines, etc., then and from thenceforth the indenture and the license thereby granted should cease, determine, and be utterly void.

Littledale, J., said at p. 671: "According to *Doe v. Bancks*,¹ this instrument was liable to be rendered void only at the election of the grantor. If it had been a freehold lease of land, subject to a condition that it should be void on non-performance of covenants, it would have been necessary for the lessor to avoid it by entry; or, if that were impossible, by claim. This instrument is a mere license to dig, and did not pass the land. An actual entry, therefore, was unnecessary to avoid it; but by analogy to what is required to be done

³ (1823) 1 B. & C. 694.

⁴ (1864) 34 L. J. N. S. C. p. 82.

⁵ *Jones v. Reynolds*, (1836) 4 A. & E. 805.

⁶ (1829) Mont. & M. A. 247.

⁷ (1863) 4 B. & S. 33.

⁸ *Hancock v. Austfn*, (1863) 14 C. B. N. S. 634.

⁹ Co. Litt. 47 a; *Knight's Case*, 5 Rep. 54.

¹⁰ (1833) 4 B. & Ad. 664.

¹ (1821) 4 B. & Al. 401.

in order to determine a freehold lease . . . it seems to follow that to put an end to this license, the grantor should have given notice of his intention so to do.”²

If the election is once determined it is determined for ever.²¹

Section 13 of R. S. O. 1897, c. 170, relating to the forfeiture of leases, is expressly declared not to extend to a grant or license for mining purposes.

The provisions of the Dominion and Provincial Statutes, and Regulations in regard to mining licenses are dealt with *infra*.

²James v. Young, (1884) 27 Ch. Div. 652.

²¹Clough v. London & N. W. Railway Co., (1871) L. R. 7 Exch. 26, p. 34.

CHAPTER V.

LEASES.

Formal and technical words are not necessary to create a lease.

Whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession and the other come into it for a determinate time, such words, whether they run in the form of a license, covenant, or agreement, are, in themselves, sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose.¹

To interpret any document one must discover the expressed intention of the parties. The question, however, always is, what is the meaning of what the parties have said? Not what did the parties mean to say?

If the Court sees an intention clearly and distinctly established by an instrument, it has no difficulty in carrying that intention into effect, subject, of course, to any rules of law that may be applicable to it, but only qualified to that extent. "It must be constantly borne in mind that a lease of mines is not in reality a lease at all in the sense in which we speak of an agricultural lease. What is called a mineral lease is really, when properly considered, a sale out and out of a portion of the land."

In *Coltness Iron Co. v. Black*,² Lord Blackburn, in referring to the above quotation from Lord Cairns' judgment in *Gowan v. Christie*,³ says: "I think this is a perfectly accurate statement."

R. S. O. 1897, c. 170, s. 3, enacts that the relation of landlord and tenant did not since the 15th day of April, 1895, and shall not hereafter depend on tenure, and a reversion or remainder in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging

¹ Bacon's Ab. Tit. Lease K.

² (1873) L. R. 2 H. L. Sc. 284.

³ (1881) 6 App. Cas. 335.

to that relation; nor shall any agreement between the parties be necessary to give a landlord the right of distress.

The effect and consequences of this legislation have not, as yet, been judicially declared.

Parcels. The lease should set forth the boundaries of the land demised, or of the minerals granted.

While, practically, there is more difficulty in fixing a boundary of underground minerals than of the surface, the same principles which guide the Court in construing words of description in an agreement for sale or demise of the surface, will apply when dealing with minerals.⁴

In *Lyle v. Richards*,⁵ where, in a lease of a mine, the boundary line was described as a line "drawn from J. V.'s house to a boundstone," and in the description of the parcels it was said "which said premises are particularly described by the map on the back of the lease," the majority of the House of Lords held that the Judge was bound to look to the map as forming part of the deed, and to tell the jury that the line was to be drawn as marked on the map. Lord Westbury dissented, and said that it being ascertained that the house itself was incorrectly laid down in the map, there was a latent ambiguity which was to be determined by evidence, and was not dependent on construction.

In *Taylor v. Parry*,⁶ it was held that the words of the demise were not to be controlled or restrained by a map attached to a lease.

Right to Work. If the owner of land in which there is a mine of minerals makes a lease of the land (without mentioning mines) for life or for years, the lessee may work such mines as were open at the date of the lease and take the profits thereof. But he can not work any new mine that was not open at the time of the making of the lease. If there be open mines, and the owner make a lease of the land with the mines therein, this shall extend to the open mines and not to any hidden mine; but if there be no open mine, and the lease is made of land together with all mines therein, then the lessee may dig for mines and enjoy the benefit thereof.⁷

That this must be assumed to have been the intention of the parties is stated by Kindersley, V.C., in *Clegg v. Rowland*,⁸ to be the ground of the law thus clearly laid down by Lord Coke.

⁴ *Davis v. Shepherd*, (1866) L. R. 1 Ch. 416.

⁵ (1866) L. R. 1 E. & I. 222.

⁶ (1840) 1 Scott, N. R. (576), also *Brain v. Harris*, (1855) 10 Ex. 908;

Davis v. Shepherd, (1866) L. R. 1 Ch. 410; *McArthur v. Brown*, (1888) 17 S. C. R. 61.

⁷ Co. Litt. 546.

⁸ (1866) L. R. 2 Eq. 165.

In *Coppinger v. Gubbins*,⁹ Sugden, L.C., says all the authorities establish that although a tenant may have a right to cut and sell turf when bog, which had previously been cut for sale, is demised as bog, or when there is no other mode of enjoying it; yet that a mere demise of bog as such will not give the lessee a right to cut and sell a portion of that which constitutes the land itself, particularly when the demise is of the bog together with other property.

Even a mining lease should, therefore, contain a license to work the mines, whether open or not, and a grant of the minerals won.

In *Dugdale v. Robertson*,¹⁰ it was held that the mines and minerals under a certain parcel of lands were included in and did pass by the lease, but that the lessees were not authorized to work them or to search for any coal or mineral therein.

In *Elias v. Snowdon*,¹ it was held that where a lease of a quarry reserves not a fixed sum by way of rent, but a share of the profits of the quarry, it is to be treated as opened for the purposes of commerce. Lord Selborne says:² "If a mine or quarry has been worked for commercial profit, that must ordinarily be decisive of the right to continue working; and, on the other hand, if minerals have been worked or used for some definite and restricted purpose (e.g., for the purpose of fuel or repair to some particular tenement), that would not alone give any such right. But if there has been a working and use of minerals not limited to any special or restricted purpose, I find nothing in the older authorities to justify the introduction of sale as a necessary criterion of the difference between a mine and a quarry which is and one which is not to be considered open in a legal sense. Use as well as sale is a perception of profit. When a mine or quarry is once open so that the owner of an estate impeachable for waste may work it, I do not consider that the sinking a new pit in the same vein or breaking ground in a new place on the same work is necessarily the opening of a new mine or a new quarry."

In *Glasgow v. Hurllet*,³ a lease of alum mines gave the lessee the right to obtain alum from certain coal wastes. A subsequent lease of the coal mines provided that nothing thereby granted should injure the rights of the parties who held the alum mines. The coal lessees could not thoroughly work the coal without removing the pillars which supported the roof, but by doing this the alum would be rendered impossible to be reached.

⁹ (1846) 3 J. & L. 410.

¹⁰ (1857) 3 K. & J. 699.

¹ (1879) 4 A. C. 454.

² At p. 465.

³ (1850) 3 H. L. C. 25.

It was held that the coal lessees were not entitled to remove the pillars.

In *Lancey v. Johnston*,³ Ferguson, V.C., granted an interim injunction restraining the lessee of a small plot of land from working an oil well therein. The lease was granted in consideration of \$25, and reserved only a nominal rental. The only covenants by the lessee were to pay rent and taxes, and the lease was silent as to the right to bore for oil or to take crude oil out of the land, but it was conceded that the lessor had no right to take oil out of the land during the term.

It has been decided that the lessor of coal mines does not by implication give power to fell trees for the use of the mines, and that the rule of law that the grant of a thing carries all things without which the thing granted could not be had, is to be understood of things incident and directly necessary.

In the case of *Earl of Cardigan v. Armitage*,³¹ Bayley, J., delivering the judgment of the Court of Queen's Bench, said: "The incidental power (to the right to dig for coals) would warrant nothing beyond what was strictly necessary for the convenient working of the coals. It would allow of no use of the surface, no deposit on it to a greater extent or for a longer duration than should be necessary, no attendance upon the land of unnecessary persons. It would be questionable at least whether it would authorize a deposit on the land for the purposes of sale, and whether it would justify the introduction of purchasers to view the coals." The strictness with which the Court of Queen's Bench have intimated that implied powers incidental to mining are to be construed, suggest the expediency of powers sufficiently ample being expressed in all instruments by which rights of mining are granted or reserved; and it seems that the maxim "*expressum facit cessare tacitum*," will be applied with great caution to stipulations in such instruments, and with a disposition to regard an express power to do some particular thing, rather as an example of the sort of things permitted, than as an exclusion of other things. To give a stipulation a controlling power, the intention that it should have that effect must be very plain.

The Rent reserved in a mining lease usually consists of a dead rent, sometimes referred to as a minimum rent, and of payments proportioned to the quantity of mineral mined, called royalties. A fixed rent as opposed to a rent varying with the profits is sometimes called

³ (1881) 29 Gr. 67.

³¹ *Supra*.

a sleeping rent.⁴ The rent must be certain or capable of being reduced to a certainty. Lord Hatherly points out in *Jegon v. Vivian*,⁵ that where a lessee agrees to pay a dead rent, he must pay it whether he works the mine or not. This is well illustrated in the case of *Palmer v. Wallbridge*,⁶ a case of a lease of mining lands in which the *redendum* was as follows: Yielding and paying therefor unto the party of the first part one dollar per gross ton of 2,240 pounds of the iron stone or ore for every ton mined and raised from the said lands and mine, payable quarterly on the first days of March, June, September and December in each year. The lease also contained the following covenants by the lessees. Covenant to dig up and mine and carry away each and every year during said term a quantity of not less than 2,000 tons of such stone or iron ore for the first year, and a quantity of not less than 5,000 tons a year in every subsequent year of the said term, and that they will pay quarterly the sum of \$1 per ton as aforesaid for the quantity agreed to be taken during each year for the term aforesaid, and a covenant by the lessees to pay the said quarterly rent or royalty in each year if the same shall then exceed the quantity actually taken, the excess shall be applied towards the payment of the first quarter thereafter in which more than the said quantity shall be taken, and to protect such openings as they shall make so as to insure the same against accident, and to indemnify the party of the first part in the event of the same happening, and against all costs of prosecution and defence thereof. There was a provision that the lessor should be at liberty to terminate the lease in case of non-payment for a certain period, and if the iron ore or iron stone should be exhausted and not to be found or obtained by proper and reasonable effort in paying quantities, then the lessees should be at liberty to determine the lease.

It was held, affirming the judgment of the Court of Appeal for Ontario, Ritchie, C.J., and Fournier, J., dissenting, that the lease contained an absolute covenant by the lessee to pay the rent in any event, and not having terminated the lease under the above proviso, he was not relieved from such payment in consequence of ore not being found in paying quantities.

Strong, J., says: "If the lessees had merely covenanted to dig up 2,000 tons of ore during the first year and 5,000 in every subse-

⁴ *Wheatley v. Westminster Brymbo Coal Co.*, 1869, L. R. 9 Eq. 538.

⁵ (1871) L. R. 6 Ch. 757.

⁶ (1888) 15 S. C. R. 650.

⁷ At p. 659.

quent year of the term, this case would have been undistinguishable from *Clifford v. Watts*,⁸ but it will be observed that the covenant is not so restricted, for after the agreement to dig the stipulated quantity, we find expressed in absolute terms, the following additional agreement 'and that they will pay quarterly the sum of one dollar per ton as aforesaid for the quantity agreed to be taken during each year for the term aforesaid,' thus making the lessees liable to pay a sum equivalent to the amount of the tonnage on the prescribed quantity of ore at the stipulated rate, whether it should be taken or not. And then, as though it had been intended to remove any possible ambiguity which might be supposed to arise upon the words, 'agreed to be taken,' we find the following covenant coming immediately after that just stated:—'And the said parties of the second part covenant and agree to and with the party of the first part, that they will pay the said quarterly rent or royalty in each year, and if the same shall then exceed the quantity actually taken, such excess shall be applied toward payment of the first quarter thereafter in which more than the said quantity shall be taken'; a covenant, which, beyond all doubt or question, contains an absolute undertaking to pay the rent or royalty in each year without reference to the quantity of ore actually extracted. This provision conspicuously and decisively distinguishes this case from *Lord Clifford v. Watts*, where Willes, J., at page 583, expressly remarks on there being no covenant 'to pay the stipulated tonnage as if the clay had been raised' in such way as clearly to imply that if there had been such a covenant similar to that now before us it would have amounted to a covenant to pay a dead rent . . . (661). Then this still leaves the covenant to pay for the stipulated quantities, an absolute covenant equivalent to one for the payment of a dead rent."

"The only other provision of the lease which can have any bearing on this question is that which enables the lessees to avoid the lease if the iron ore should be exhausted. . . . Taking the covenants already considered to be as I hold they are, absolute covenants for the payment of a dead rent during each and every year of the term of ten years, this power given to the lessees to determine the lease at their option in the event of the failure of the iron ore, . . . so far from influencing the construction in such a way as to reduce the clear, absolute terms of the preceding covenants, has precisely the opposite tendency, since it shows that the case which has actually happened was in the contemplation of the parties, and was provided for by the in-

⁸ (1870) L. R. 5 C. P. 577.

roduction into the lease of this important proviso, enabling the lessees to relieve themselves from liability by putting an end to the term."

Gwynne, J.⁹ "The case of *Bridges v. Potts*,⁹¹ is the nearest case to the present, and in my opinion the present case comes within it. There the royalty agreed upon was a stated sum per ton, etc. . . . Now, a minimum fixed rent, payable either by the year or the quarter, may be reserved, and made payable absolutely without the use of the words "minimum rent," which were the words used in *Bridges v. Potts*. . . . Rent so reserved is clearly, in my opinion, a minimum fixed rent payable quarterly, whether any ore may have been raised or not. The covenant to pay it is as much an absolute and unqualified covenant as was the covenant in *Jervis v. Tomkinson*,¹⁰ and the quarterly payments are as much a determined rent absolutely payable so long as the term shall endure, which the lessees can themselves determine, as was the rent in the *Marquis of Bute v. Thompson*,¹ or that reserved in *Bishop v. Goodwin*.² The lease does not operate by way of a warranty by the lessor that there is to be found iron ore in the demised premises which can be worked profitably, or at all;³ and in *Gowan v. Christie*,⁴ Lord Cairns says, that the instruments which are called mineral leases, 'when properly considered, are sales out and out of a portion of the land.' He says it is liberty given to a particular individual for a specific length of time to go into and under the land, and to get certain things there if they can find them and to take them away just as if he had bought so much of the soil. ⁵ There is no room here for the application of the doctrine of total failure of consideration; it was, in fact, upon the faith of and in consideration of the lessees' covenant to pay the rent at the times and in the amounts in the covenant stated that the lessor granted to them the exclusive possession of the demised premises, etc."

Whether the minerals can be got easily or with difficulty, or even whether they exist or not is immaterial where there is an absolute unqualified covenant to pay rent.⁶

In *Foley v. Addenbrooke*,⁷ there was a covenant to raise a certain quantity of mineral and pay certain royalties upon it, or else pay a

⁹ P. 667.

⁹¹ *Supra*.

¹⁰ (1856) 1 H. & N. 195.

¹ (1844) 13 M. & W. 487.

² (1845) 14 M. & W. 260.

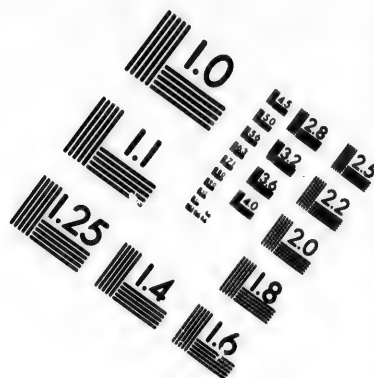
³ *Jefferys v. Fairs*, (1876) 4 Ch. D. 448.

⁴ (1873) L. R. 2 Sc. App. 273.

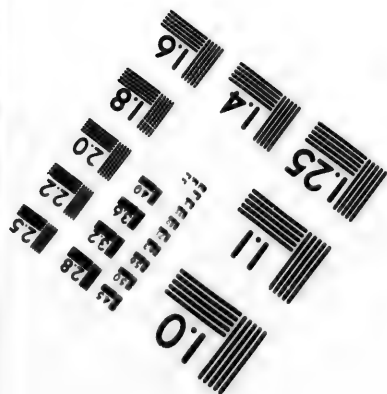
⁵ P. 669.

⁶ *Jervis v. Tomkinson*, (1856) 1 H. & N. 208; *Marquis of Bute v. Thompson*, (1844) 13 M. & W. 487.

⁷ (1844) 13 M. & W. 174.



A resolution test chart featuring various patterns of vertical and horizontal lines. The patterns are arranged in a grid-like fashion, with some patterns being larger and more prominent than others. Numerical values are placed next to the patterns, indicating the resolution level. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, and 4.5. The patterns consist of groups of lines, some of which are thicker and more widely spaced than others.



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certain fixed quarterly rent to the landlords. It was held that if the lessee paid the fixed rent he was only liable for nominal damages for breach of the covenant to work.⁷

"Rents and profits" include royalties payable under a lease of a stone quarry.⁸

Where the tenant continues in possession after the expiration of his term, the terms of the holding are considered to be the original ones.⁸¹

Distress. In *re Roundwood Colliery Co., Lee v. R. C. Co.*,⁹ it was held that the power to distrain for rent in arrears not only upon chattels belonging to the lessees on the demised premises, but also upon chattels belonging to the lessees in or about "any adjoining or neighboring collieries," reserved in a mining lease to the lessor, did not constitute the mining lease a bill of sale within "The Bills of Sale Act, 1878."

An express power contained in a mining lease to distrain on lands not included in the demise is valid as against assignees with notice.¹⁰

Similarly the right of distress for rent of whatever kind may be taken away or suspended by an express or implied agreement not to distrain.¹

Covenants. In *Strelley v. Pearson*,¹¹ it was held that a provision that the lessee shall be entitled to determine the lease when the mine is incapable of being worked at a profit is not a "usual" clause in a lease of a colliery.

In *Davis v. Treharne*,² Lord Watson says: "Where a proprietor of the surface and the subjacent strata grants a lease of the whole or part of his minerals to a tenant I think it is an implied term of that contract that support shall be given in the course of the working to the surface of the land. If it is not intended that that right should be reserved the parties must make it very clear upon the face of their contract; in other words, they must express their intention so clearly as to enable a Court to say that such intention is plain. I think that rule was laid down by the late Lord Justice Mellish in the case of

⁷ *Mellers v. Devonshire*, (1852) 16 Beav. 252; *Jefferys v. Fairs*, (1876) 4 Ch. Div. 448.

⁸ *Leppington v. Freeman*, (1891) 40 W. R. 348; affirmed 66 L. T. N. S. 357.

⁸¹ *Jones v. Shears*, (1840) 4 A. & E. 837.

⁹ (1897) 1 Ch. 373.

¹⁰ *Daniel v. Stepney*, (1874) L. R. 9 Exch. 185, reversing S. C. L. R. 7 Exch. 327.

¹ *Wallace v. Fraser*, (1878) 2 S. C. R. 522.

¹¹ (1880) 15 Ch. Div. 113.

² (1881) 6 App. Cas. 469.

Hext v. Gill, and I quite agree with that ruling. It may be done in express terms; but, of course, it is not necessary that express language be used; for it may appear by a plain implication from other clauses of the deed, as in the case of Taylor v. Shafto, where an obligation was laid on the tenant to perform certain acts which were plainly inconsistent with supporting the surface."

The House of Lords held there was nothing in the documents there in question to take away the right of support.³

In Smith v. Darby,⁴ it was held that the lease there in question gave the lessees of the mines the right to work so as to take away the support from the surface, making such compensation as was therein provided.

Mellor, J., says:⁵ "The man who grants the minerals and reserves the surface is entitled to make any bargain that he likes."

As to the construction of covenants in a mining lease, see James v. Cochrane.⁶

In Pell v. Shearman,⁷ the defendants covenanted with the plaintiff that if he would surrender to his lessor a certain lease they would within two years or within such period as should be agreed in a new lease, which the lessor had agreed to grant to them, sink upon the demised premises a pit to the depth of 130 yards in search of coal, and in case a marketable vein of coal should be reached, pay to the plaintiff £2,500. The plaintiff having sued the defendants for a breach of the covenant gave evidence to show that if the defendants had sunk the pit marketable coal might have been found, and the jury assessed the damages at £2,500.

On motion to reduce the damages to a nominal amount Alderson, B.,⁸ said: The plaintiff has lost the advantage of having a pit sunk to the depth of 130 yards at the cost of the defendants; he has also lost a chance, amounting to a certainty, of finding marketable coal; he is, therefore, entitled to recover either the amount which the defendants would have expended in sinking the pits or the amount which would have become payable if marketable coal had been found. That was a question for the jury, and I think the finding was quite right.

The Duke of Beaufort v. Bates.⁹ Coal and iron works were demised, together with lands and mines under other lands not included

³ See also Smart v. Morton, (1855) 5 E. & B. 30.

⁴ (1872) L. R. 7 Q. B. 716.

⁵ P. 726.

⁶ (1853) 8 Exch. 556.

⁷ (1855) 10 Exch. 766.

⁸ P. 771.

⁹ (1862) 3 De G. F. & J. 381.

in the demise, with liberty to the lessees to make and use roads and ways over any of the lands, and to do all such other acts upon the lands as should be necessary for the purpose of the works, and the lessees covenanted to uphold and keep in good repair the furnaces and other works, houses and other buildings then standing and which during the term should be erected and built on the demised lands, and all other demised premises, and at the expiration of the term to deliver up the property "and all ways and roads in, upon or under the same land" in such good order that the works might be continued by the lessor.

It was held, that this covenant did not extend to trams fastened to sleepers not affixed to the freehold which the tenant had placed upon the roads for the purpose of using them as tramways, and that the landlord therefore was not entitled to an injunction to restrain the tenant from disposing of them during the term.⁷¹

In *Hodgson v. Moulson*,⁷² it was held that where, in a mining lease, the lessees covenanted that they would work in a workmanlike manner and leave pillars of stone of sufficient strength to support the roofs of the mine, and get the stone in the best and usual way, they were liable to the reversioner for damage done to the surface of the land by its cracking and subsiding for want of sufficient pillars being left to support the roofs of the mines, though they might have worked the mines in the usual and workmanlike manner.

In *Conlin v. Elmer* ^{*} a mining lease for 99 years contained provisions enabling the lessor to demand at his option a royalty upon the proceeds of the mine, or \$4,000 in lieu of such royalty, and the lessor had not exercised such option, and it was held that the lessee was a purchaser for value, and that a prior voluntary conveyance was void against him.

In *Cartwright v. Forman*,^o a mining lease contained a covenant by the lessees to deliver to the lessors a certain quantity of coal at the pit's mouth, and also a proviso that, if the minerals should be fully and fairly gotten before the expiration of the term, the lessees might determine it on giving twelve months' notice.

The covenant was held to be absolute, subject to there being coal in the pit, and that it was no answer to a declaration for breach of the covenant to say that the coal could not be practically worked without costing more than it was worth.

⁷¹ Also see *Turner v. Cameron*,
(1870) L. R. 5 Q. B. 313.

⁷² (1865) 18 C. B. N. S. 332.

^{*} (1869) 16 Gr. 541.

^o (1866) 7 B. & S. 243.

It would be an answer to such an action if the covenants were impossible of performance at the time they were entered into, but not if they subsequently became impossible.¹⁰

In *re Bidder v. North Staffordshire Railway Co.*,¹ where by a lease of mines, the lessees were authorized to take and use "full and sufficient rail and other ways, paths and passages to and for the said lessees and their agents, servants and workmen or others to carry away all or any of the coal, etc., the produce of the mines thereby demised, or any other mines."

It was held that the lessees by virtue of this clause might lay down a railroad for the carriage of coals raised by them from the pits of adjoining collieries worked by them, and that they were not restricted to using the railway for the carriage of coals raised by or through the pits of the mines demised to them by the above-mentioned lease.

A coal seam is "won" when it is put in a state in which continuous working can go forward in the ordinary way.²

In *Elliot v. Rokeby*,³ the House of Lords held, reversing the Court of Appeal, that the deed there in question must be read *separatim* as to the winning of each seam of coal.

In *Jegon v. Vivian*,⁴ the lease contained a covenant to work the mines in a proper and workmanlike manner.

It was held that working by instroke was not a breach of this covenant, and also that under the terms of the lease the lessees were not liable to damages for not working the coal continuously.

In *Lewis v. Fothergill*,⁵ Lord Hatherly points out that the question of instroke always has relation to the question of breaking the barrier.

In *Kinsman v. Jackson*,⁶ Jessel, M.R., dissents from the observations of Malins, V.C., in that case. The case there was upon a demise of a license to dig, work and search for china clay and china stone within, under and throughout a certain parcel of land. The lease contained a covenant that the lessee would, during the term, work the said limits for china clay and china stone in the most proper and effectual manner with a reasonable number of able-bodied men and assistants, kept employed on the said works at all reasonable usual working times, so that the china clay and china stone to be

¹⁰ *Clifford v. Watts*, (1870) L. R. 5 C. P. 586.

¹ (1878) 4 Q. B. D. 412.

² Per Lord Hatherly in *Lewis v. Fothergill*, (1869) L. R. 5 Ch. 111.

³ (1882) 7 App. Cas. 43.

⁴ (1871) L. R. 6 Ch. 742.

⁵ (1869) L. R. 5 Ch. 109.

⁶ (1880) 42 L. T. N. S. 80.

there found may be raised, washed and made merchantable as speedily as practicable.

Jessel, M.R., decided that there was a breach of this covenant if the lessee having raised a quantity of china clay from the works, then takes his men off from the raising, and employs them in making it merchantable for a long period.

His refusal of an interim injunction against the landlord, who had taken possession, was affirmed by the Court of Appeal.⁷

In *Sharp v. Wright*,⁸ Romilly, M.R., held that on the construction of an agreement for a coal lease for 21 years the only rent reserved being dependent on the quantity of ore raised, and being made payable quarterly, that the lessee was bound to commence working immediately and proceed continuously.

In *Jegon v. Vivian*,⁹ however, Lord Hatherly says if the parties mean the lessee to work continuously they ought to say so.

If the lessors desire to secure the working of their mines beyond the amount of the sleeping rent they must in the lease insert covenants which throw that obligation on the lessees, and in the absence of such stipulation there is no obligation on the lessee to do anything more than to pay the sleeping rent.¹⁰

Quiet Enjoyment. The ordinary covenant for quiet enjoyment is broken where there is any legal proceeding interfering with the title or possession of the demised land or minerals.

The interruption contemplated by the covenant need not necessarily be an interference with the title, but may extend to an interference with the enjoyment. In every case it is a question of fact whether the quiet enjoyment of the land has or has not been interrupted, and where the ordinary and lawful enjoyment of the demised land is substantially interfered with by the acts of the lessor or those lawfully claiming under them, the covenant is broken, though neither the title to the land nor the possession of the land may be otherwise affected.¹

The covenant, however, is not an absolute warranty for quiet enjoyment, as shewn in *Dennett v. Atherton*,² where the Exchequer Chamber held that a covenant for quiet enjoyment did not imply a

⁷ (1880) 42 L. T. N. S. 558.

⁸ 1860) 28 Beav. 150.

⁹ (1871) L. R. 6 Ch. 757.

¹⁰ *Wheatley v. Westminster
Brymbo Coal Co.*, (1869) L. R. 9
Eq. 553.

¹ *Sanderson v. Mayor of Berwick*,
(1884) 13 Q. B. D. 547, per Fry, J.,
561.

² (1872) L. R. 7 Q. B. 216.

warranty that the land was capable of being used for any purpose not expressly excluded by the lease.³

In *Shaw v. Stenton*,⁴ the lessor after making a lease of a coal mine excavated a quarry of iron stone lying under some of the closes under which the demised coal mine was situated, but above that mine; and made holes from the strata of iron stone into the demised mine, thereby causing quantities of water to percolate into the demised mine; the lessor also by excavating the quarry caused parts of the roof of the demised mine to fall in. The result was that the demised mine became flooded and the working of the coal rendered impracticable.

It was decided that though the lessor had a right to excavate the quarry, yet, as the excavation had caused an interruption of the lessee's occupation of the demised mine, the lessor was liable for a breach of his covenant for quiet enjoyment.

Watson, B., said:⁵ "It is not necessary that the covenantor should commit an act of interruption upon the demised premises."

In *Harrison v. Muncaster*,⁶ M. leased to P. a mine for the purpose of being worked as an iron mine, and subsequently leased to H. an adjoining mine for the same purpose, the lease containing a covenant for quiet enjoyment.

P., while properly working his mine under the terms of his lease, struck a "feeder," with the result that a large body of water, the existence of which was not known, flooded the P. mine, which lay to the dip of the H. mine, and rising in the levels found its way into the H. mine, which was on a higher level, causing damage, and M. was held not liable.

Bowen, L.J., said:⁷ "It seems to me that an interruption under such a covenant is not caused by the lessor or by those claiming under him unless it is either a direct act of interruption, or unless it is some act of which it either was foreseen, or ought by reasonable care to have been foreseen, that the consequence in the particular case would be an interruption."

The above observations are applicable to a mining lease made in pursuance of the Act respecting Short Forms of Leases.⁸

In *Spoor v. Green*,⁹ the facts were that in 1844 the defendant was party to a 21 years' lease of coal mines, which gave certain powers

³ *Harrison v. Muncaster*, (1891) 2 Q. B. 689.

⁴ (1858) 2 H. & N. 858.

⁵ At p. 866.

⁶ (1841) 2 Q. B. 680.

⁷ At p. 689.

⁸ R. S. O. (1897) Ch. 125.

⁹ (1874) L. R. 9 Exch. 99.

over the surface incidental to the working of those mines, and an adjoining colliery. The coals so demised were substantially worked out before September, 1845. In October, 1845, the defendants sold and conveyed the land to J., who knew of the workings, and the defendant covenanted with him for title, for quiet enjoyment and against encumbrance. In July, 1846, J. sold and conveyed to the plaintiff, who was ignorant of the workings. In 1865, in consequence of the mining operations above described, the land subsided, and the houses built on it by J. and the plaintiff were damaged. In 1848, subsequently to the plaintiff becoming owner of the land, and within twenty years before the action, the lessee or persons acting under their authority entered the mines and took some fire-clay which was not included in the demise, and a few loose pieces of coal.

In giving judgment in an action brought on the above covenants the declarations in which alleged that whilst the plaintiff was seized the lessees entered upon the land and worked, and got, and carried away the coal, whereby the plaintiff lost the coal and the land subsided, it was held by Bramwell and Cleasby, BB. (Kelly, C.B., diss.): First, that the fact of the coals having been worked out was no breach of the covenant for title, J. never having bought those coals. That the subsistence of the lease in respect of the coal left unwrought, and the powers not exercised incident to the working of their colliery did not constitute a breach. That the breach, if any, was complete in the time of J.; secondly, that neither the acts of trespass in taking the fire-clay in 1848, nor the subsidence caused in 1865 by workings in 1845 were breaches of the covenant for quiet enjoyment, on the ground that the first was a mere trespass, and that as to the second, the subsidence gave no new cause of action; the principle of *Bonomi v. Backhouse*,¹⁰ not applying to a case where the subsidence is caused by a wrongful taking of the plaintiff's minerals.

In *Taylor v. Shafto*,¹ by a deed in 1857, reciting the will of S., under which the defendant became tenant for life of the W. estate, the trustees of the defendant conveyed lands at S., part of that estate, to R., in fee, reserving the coal thereunder with power to work, and carry away the same, the defendant, or the person or persons for the time being entitled thereto, etc., and his and their assigns paying to R., his heirs and assigns, compensation for damage sustained thereby, and the defendant covenanted that, notwithstanding any act

¹⁰ (1861) 9 H. L. C. 503.

¹ (1867) 8 B. & S. 228.

done by him or S. to the contrary, the trustees had power to grant and release the lands, etc. The lessees also covenanted not to sink pits within 200 yards of any dwelling-house, etc., and to leave unwrought the coal under the mansion house and park and other parts of the superincumbent lands, but not including the lands at S.

The lease contained other covenants for the security or benefit of portions of the surface, not including the lands at S., and for making compensation for damage. Dwelling-houses had been built upon the lands at S. after the purchase by R., and the lessees had so worked the mines as to cause portions of the lands to subside and sink, and the dwelling-houses and their foundations to be weakened, cracked and injured. In an action by the plaintiff upon the covenant to pay compensation, and the covenant for title contained in the deed of 1837, the jury having found that the lessees had worked the mines according to the best and most approved method of working collieries of the like nature on the Tyne and Weir, and that the sinking of the land was not caused by the weight of the houses,

It was held by the Queen's Bench that the plaintiff was not entitled to recover on the covenant for compensation and by the Exchequer Chamber, affirming the judgment of the Queen's Bench, and following the judgment of Wood, V. C., in *Shatto v. Johnston*, that the lessees were not only authorized but bound so to work the mines as to obtain therefrom the largest quantity of coals that could be gotten consistently with the safety of the mines, and without regard to the safety of any dwelling-house which might be erected after the date of the lease, upon any portion of the surface not specially protected by any of its provisions, and, therefore, the covenant for title was broken by the grant of the prior lease.

Kelly, C.B.:² "The obligation of the lessee under the covenant is to work the mines so as to produce with safety the greatest quantity of merchantable coals from, and out of, each and every the workable seams thereof. This obviously means with safety to the mines, and this is the only qualification upon the otherwise unrestricted working of the mines, from which therefore, the lessee must obtain all the coal which the mines will yield with safety to the mines themselves and without any regard to the safety of the houses upon the surface."

Forfeiture and Waiver. The true construction of a proviso in a lease that it shall be utterly void for non-payment of rent or other

² P. 251.

breach of covenant, is, that the lease is not to be utterly void, but voidable only at the option of the lessor.³

A party to a lease cannot take advantage of his own breach of any of the conditions or covenants in the lease to avoid the lease.⁴

The lessor may elect to avoid the lease, or to waive the forfeiture and treat the lease as valid. The lease continues valid till the lessor determines his election by avoiding it.⁵

If he once determines his election it is determined forever, and cannot be retracted by him.⁶

If with knowledge of the forfeiture by receipt of rent, which accrues due after the forfeiture or other unequivocal act, he shows his intention to treat the lease as subsisting, he has determined his election forever, and can no longer avoid the lease.⁷

If, on the other hand, by bringing ejectment or otherwise he unequivocally shows his intention to avoid the lease he has determined his election, and cannot afterwards waive the forfeiture, and treat the lease as subsisting, and the effect cannot be varied by subsequent acts on the part of the lessor.⁸

In each such case the effect of a receipt or payment of money must depend upon the intention of the party receiving or paying, though, as shown in *Croft v. Lumley*, a man's acts are to speak rather than his words.

In *Denison v. Maitland*,⁹ *Armour, C.J.*, says :¹⁰ "As the mere receipt after the forfeiture of rent which accrued due before the forfeiture, would not operate as a waiver by the landlord of the forfeiture;¹¹ so the mere payment of rent, after the forfeiture, which accrued due before the forfeiture, would not amount to a request on the tenant's part to be relieved from the forfeiture."

Where a lease provides for the determination of the term after the expiration of a notice to be given by the lessee, and payment of all

³ *Grey v. Friar*, (1853) 4 H. L. C. 602; *Davenport v. The Queen*, (1877) 3 App. Cas. 128.

⁴ *Davenport v. The Queen*, (1877) 3 App. Cas. 129.

⁵ *Denison v. Maitland*, (1891) 22 O. R. 170.

⁶ *Scarfe v. Jardine*, (1882) 7 App. Cas. 360.

⁷ *James v. Young*, (1884) 27 Ch. Div. 663; *Croft v. Lumley*, (1858) 6 H. L. C. 705; *Grimwood v. Moss*, (1872) L. R. 7 C. P. 364.

⁸ *Dendy v. Nicholl*, (1858) 4 C. B. N. S. 376; *Grimwood v. Moss*, (1871) L. R. 7 C. P. 365; *Denison v. Maitland*, (1891) 22 O. R. 166; *Jones v. Carter*, (1846) 15 M. & W. 718; *Evans v. Davis*, (1878) 10 Ch. Div. 763.

⁹ (1891) 22 O. R. 174.

¹⁰ At p. 174.

¹¹ *Price v. Worwood*, (1859) 4 H. & N. 512.

rents and performance of all his covenants, the payment of the rent and performance of the covenants are conditions precedent to the tenant's right to determine the term.¹

This case was discussed in *Grey v. Friar*,² where there was a similar proviso in a lease of a colliery, a clause being added, that the determination should be without prejudice to any claim or remedy which any of the parties thereto might be entitled to, for breach of any of the covenants or agreements contained in the lease.

The Court of Exchequer held that in view of this additional clause the performance of all the covenants was not a condition precedent to the tenant's power to put an end to the lease.

This was reversed by the Exchequer Chamber, and the House of Lords being equally divided, the decision of the Exchequer Chamber that the performance of the covenants was, notwithstanding the introduction of the latter words in it, a condition precedent to the power of the lessees to determine the lease by notice, was affirmed.

It was pointed out by the Lord Chancellor³ that the lease then in question contained an infinity of covenants of the most minute description.

In *Bridges v. Potts*,⁴ there was an agreement for a lease in which it was stipulated that the lessees were to be at liberty at any time thereafter (after the date of the agreement) to determine the agreement, or the lease thereby agreed to be granted, and to abandon the iron works on giving to the lessors six months' notice in writing of their intention so to do.

It was held that the six months' notice might expire at any time, and need not expire at the end of a current year. The minimum rents were apportioned.

Erle, J., said,⁵ that it was material to consider in construing the contract there in question that it relates to the working of a mine which he describes as a hazardous speculation.

But Williams, J., says,⁶ that the rule as to the determination of the tenancy by notice is common to demises of mining property, as well as to demises of land or houses, or any other description of property.

¹ *Potter v. Shephard*, (1796) 6 T. R. 665.

² (1853) 4 H. L. C. 565.

³ (1853) 4 H. L. C. 618.

⁴ (1864) 17 C. B. N. S. 314.

⁵ At p. 332.

⁶ At p. 357.

Whether a notice by a lessee of his intention to surrender his lease is afterwards waived, is a question of intention.¹

In *Coventry v. McLean*,² where the authorities on relief from forfeiture are collected and commented on, it was determined that a lessee is not entitled as of right to relief against forfeiture for non-payment of rent, and that such relief may be refused on collateral equitable grounds.³

Section 13 of R. S. O. 1897, c. 170, corresponds to section 14 of the English Conveyancing and Law of Property Act, 1881, and is expressly declared not to extend to a "mining lease" which is defined as a lease for mining purposes, that is the searching for, working, getting, making merchantable, carrying away or disposing of mines and minerals, or purposes connected therewith, and is declared to include a grant or license for mining purposes.

Recovery of Possession. In *Boulton v. Shea*,⁴ the plaintiffs leased Crown lands in Ontario to the defendants, the lease containing a covenant by the defendant not to remove gravel or sand from the premises.

The Commissioner of Crown Lands ruled that the patent should issue to the plaintiffs upon payment to defendant for his improvements.

The Supreme Court held⁵ that the plaintiffs were not in a position to bring an action against the defendant, claiming arrears of rent, payment for use and occupation, damages for breach of the covenant not to remove gravel, and delivery of possession, until the defendant had been paid for his improvements.

Sections 2, 3, and 4 of 4 Geo. II. c. 28, were brought into force in Ontario by 32 Geo. III. c. 1, and afterwards substantially re-enacted in 19 Vict. c. 43, ss. 263-265, and now appear in R. S. O. 1897, c. 170, as sections 20-25.

Fixtures. The authorities as to the meaning of the term "fixtures," as to the nature of the tenant's right to remove tenant's fixtures, and as to the time within which such right must be exercised, were elaborately reviewed by Armour, C.J., in delivering the judgment of the Queen's Bench Divisional Court in *Argles v. McMath*,⁶ subsequently affirmed by the Court of Appeal.⁷

¹ *Jones v. Shears*, (1840) 4 A. & E. 332.

² (1894) 21 A. R. 176.

³ See *Barrow v. Isaacs*, (1891) 1 Q. B. 417.

⁴ (1893) 22 S. C. R. 742.

⁵ Gwynne, J., dissenting.

⁶ (1894) 26 O. R. 224.

⁷ (1896) 23 A. R. 44.

The general rule as to fixtures laid down in the notes to *Elwes v. Maw*, in *Smith's Leading Cases*,² "that whatever is annexed to the realty becomes part of it, and that the person who was the owner of it, when a chattel, loses his property in it, which immediately vests in the owner of the soil, *Quicquid plantatur solo solo cedit*," was held by the House of Lords in *Wake v. Hall*³ to be too broadly stated.

Like all other rules, it has received from time to time judicial modifications to suit the exigencies of modern life and modern progress, and numerous exceptions and qualifications have been grafted on it in favour of trade, manufacture and mining.

The rule applies where buildings have been erected by a trespasser or wrongdoer, whether innocently or knowingly so.

It also applies where a tenant builds a building, permanent fixture to the soil, with the exception that a tenant is at liberty to remove trade fixtures. Mining is a trade within the meaning of this exception.

In *Wake v. Hall*,⁴ the House of Lords held that the rule had no application to the case where miners erected buildings for mining purposes, under customs sanctioned by statute which entitled them to do so, and it was held that such fixtures could be removed from land which belonged to others within a reasonable time, though the miners had no estate or term in the land. This decision would apply to erections for mining purposes lawfully placed on the lands of another by a mineral owner for mining purposes. The decision was based on the proposition that the buildings were from the first intended to be accessory to the mining, and that there was nothing to show that the property in them was intended to be irrevocably annexed to the soil. The Court of Appeal in *Hobson v. Gorringe*,⁵ have held that the intention of the person affixing a fixture to the soil is material only so far as it can be presumed from the degree and object of annexation.

In re the Brantford Electric and Power Company and Draper,⁶ Falconbridge, J., held that a covenant in a lease to pay for "buildings and erections" on the demised premises, covers and includes fixtures and machinery, which would have been fixtures but for 58 Vict. c. 26, s. 2, s.-s. (c).

This was subsequently affirmed by the Divisional Court and the Court of Appeal.⁷

² Vol. II., 10th ed., 202.

³ (1883) 8 App. Cas. 203, per Lord Blackburn.

⁴ (1883) 8 App. Cas. 195.

⁵ (1897) 1 Chy. 182.

⁶ (1896) 28 O. R. p. 40.

⁷ (1897) 24 A. R. 301.

In *Whitehead v. Bennett*,⁸ Kindersley, V.C., held that while a tenant had a right to remove anything in the nature of machinery, engines, or plant, yet there was no right to remove brick buildings though erected for the purposes of trade.

In *Lawton v. Lawton*,⁹ and *Foley v. Addenbrooke*,¹⁰ a fire engine set up for the purposes of a colliery by a tenant for life, went to the executor of the tenant as part of the personal estate, and not to the remainderman.¹

*Warner v. Don*² was an appeal from the Supreme Court of Nova Scotia, in which it was held that the fixtures included in the meaning of the expression "personal chattels," by the 10th section of the Nova Scotia Bills of Sale Act, are only such articles as are not made a permanent portion of the land, and may be passed from hand to hand without reference to or in any way affecting the land, and the "delivery" referred to in the same clause, means only such delivery as can be made without a trespass or a tortious act.

An instrument conveying an interest in land and also fixtures thereon, does not require to be registered under the Nova Scotia Bills of Sale Act.²¹ And there is now no distinction in this respect between fixtures covered by a licensee's or tenant's mortgage, and those covered by a mortgage made by the owner of the fee.

*Sedgewick, J.*²² Section 10 of the Nova Scotia Bills of Sale Act, enacts in part as follows: "The expression 'personal chattels' shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate." This provision was taken from the corresponding provision of the English Bills of Sale Act, 1854, and is an exact copy of it. The English clause has been altered by the Bills of Sale Act of 1878, and the amending Act of 1882, but these changes have not yet been adopted by the Nova Scotia Legislature. The question upon this appeal is, is the engine here a personal chattel or a fixture within the meaning of section 10, or is it a part of the real estate? If it is such a fixture, the appellant's view must prevail, the engine being liable to seizure under execution against the mortgagor. Now, there is no doubt that at common law this engine, attached as it was to the freehold, was a fixture within the primary meaning of that word.²³ Stress was laid at the argument before us upon the fact that this was

⁸ (1858) 27 L. J. Ch. 475.

⁹ (1743) 3 Atk. 13.

¹⁰ (1844) 13 M. & W. 174.

¹ See *Minshall v. Lloyd*, (1837) 2

M. & W. 450.

² (1896) 26 S. C. R. 388.

²¹ R. S. N. S. 5th series, c. 92.

²² *Ib.* p. 391.

²³ *Ib.* p. 392.

the case of a mortgage by a licensee or tenant, not by the owner of the fee, and cases were cited to which I shall expressly refer, distinguishing between fixtures covered by a tenant's mortgage, and those covered by that of the owner. Admitting for the moment that the mortgage in question is a tenant's and not an owner's mortgage, I have come to the conclusion that there is now no such distinction to be made, and that it has been so declared, as well by the House of Lords as practically by the Imperial Parliament in the amending Act of 1878, to which I have referred. It was decided by Lord Hatherley, when V.-C., Sir Wm. Page Wood, that if an instrument which conveys an interest in land conveys also machinery affixed to land, such instrument does not require registration under the Bills of Sale Act. *Mather v. Fraser*.²¹ The Court of Queen's Bench, in 1869, followed that decision in *Longbottom v. Berry*.²² And in the Court of Exchequer Chamber, in 1872, when judgment was delivered by Lord Blackburn, in *Holland v. Hodgson*,²³ Lord Hatherley's view, in *Mather v. Fraser*, was referred to, and entirely approved. And so, too, in the case of *Boyd v. Shorrocks*,²⁴ decided in 1867, where the mortgage in question was made, not by the owner, but by a tenant."

²¹ (1856) 2 K. & J. 536.

²³ L. R. (1872) 7 C. P. 328.

²² (1869) L. R. 5 Q. B. 123.

²⁴ (1867) L. R. 5 Eq. 72.

CHAPTER VI.

WORKINGS.

The Right to Work Mines has been described as a right of property which, when duly exercised, begets no responsibility.

In giving judgment in *Wilson v. Waddell*,¹ where it was held that mineral workings which caused a subsidence of the surface, and a consequent flow of rainfall into an adjacent coal field, the injuries being entirely from gravitation and percolation, are not a valid ground for any claim for damages, Lord Blackburn said,² "The question seems to be, whether there is any servitude on the owner of the upper mines for the benefit of the owner of the mines on the dip, to preserve either the surface or the subjacent minerals as water-tight as the undisturbed state of the strata. No authority has been cited, either in a Scotch or an English Court, in favour of the doctrine that there is such a servitude. The general rule of law in both countries is, that the owner of one piece of land has a right to use it in the natural course of user, unless in so doing he interferes with some right created either by law or contract; and, as a branch of that law, the owner of the minerals has a right to take away the whole of the minerals in his land, for such is the natural course of user of minerals; and that a servitude to prevent such an user must be founded on something more than mere neighborhood."

An Owner in Fee Simple in possession of lands and the mines and minerals therein is entitled not only to work open mines, but also to open new mines.³ *Qui jure suo utilitur neminem laedit.*

A Limited Owner⁴ (such as a tenant for life or a tenant for years),⁵ may only work open mines and such other mines as are au-

¹ (1876) 2 App. Cas. 95.

² At p. 99.

³ Tudor's L. C., Real Property & Conveyancing, 3rd Ed., p. 105.

⁴ As to dowress see Ch. VIII. *infra.*

⁵ See Chap. V. *supra.*

thorized to be worked by such limited owner in the grant, demise or other instrument creating the limited estate.⁶

The case of the open mine is said by Lord Justice Bowen⁷ to be not an anomalous paradox found embedded in the law of real property, but only an illustration of the mode in which the law gives a reasonable effect to the general language of a grant, even though the result is to allow the inheritance to be consumed by a limited owner.

Digging new pits in an open mine is not opening a new mine, and the produce of such new pits is income to which a tenant is entitled.⁷¹

The relative rights and liabilities of a limited owner of land and his successor are largely determined by the law of waste.⁸

Prima facie, a lessee of lands has no right to bore for oil, and an interim injunction has been granted restraining a lessee from pumping oil from a well made by him for that purpose on the demised premises.⁹ In the absence of express or implied authority by the lease, neither the lessor, nor the lessee¹⁰ is entitled to open a new well and take oil.¹¹

⁶ *Saunders's Case* (1599) 5 Coke, 22; *Plymouth v. Archer*, (1782) 1 Bro. C. C. 159; *Viner v. Vaughan*, (1840) 2 Beav. 466; *Coppinger v. Gubbins*, (1846) 3 J. & Lat. 397; *Doherty v. Allman*, (1878) 3 App. Cas. 734; *Ellis v. Snowden*, (1879) 4 App. Cas. 454; *Campbell v. Wardlaw*, (1883) 8 App. Cas. 641; *Re Kemey's Tynte*, (1892) 2 Ch. 211; *Ferrand v. Wilson*, (1845) 4 Ha. 388; see *Wentworth v. Turner*, (1795) 3 Ves. 3.

⁷ *In Dashwood v. Magniac*, (1891) 3 Ch. 360.

⁷¹ *Cowley v. Wellesley*, (1866) L. R. 1 Eq. 656; see *Miller v. Miller*, (1872) L. R. 13 Eq. 263; *Elias v. Snowden*, (1879) 4 App. Cas. 454. As to the working by a tenant for life of dormant or abandoned mines, see *Bagot v. Bagot*, (1863) 32 Beav. 509.

⁸ The English Cases on the law of waste, which is based to a great extent upon the civil law of usufruct, per Bowen, L.J., (1891) 3 Ch.

362, are collected in Lord Chancellor Hardwicke's judgment in *Garth v. Cotton*, and White & Tudor's notes thereon: (1750) 1 Ves. 524; 2 W. & T. L. C. (7th Ed.) 970.

⁹ *Lancey v. Johnston*, (1881) 29 Grant 67.

¹⁰ *Ib.*

¹¹ *Ib.*; see as to "natural gas," *Ontario Natural Gas Co. v. Smart*, (1890) 19 O. R. 591; affirmed, 18 A. R. 626, which decided that "natural gas" is a mineral. In West Virginia it has been held that "natural gas" is incapable of being absolute property, and is capable of qualified property only, belonging to him who first appropriates it, and that a tenant was not liable to account for the value of gas produced from an oil well which the tenant had the right to make, and from which the gas issued by its own force. *Petroleum Company v. Transportation Company*, (1886) 28 W. Va. 210.

A tenant is not entitled to remove minerals deposited upon the bed of a pool on the demised premises.¹¹

If the limited owner holds his estate without impeachment of waste he may open new mines.¹²

A tenant for life of mines is bound to work them with due care and attention to the interests of those who are to come after.¹³

In Ontario an estate for life without impeachment of waste does not confer upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right shall expressly appear by the instrument creating such estate.¹⁴

An action for permissive waste does not lie against a tenant for life.¹⁵

The law of waste regards substance rather than technicality, and requires an act to be appreciably injurious to the inheritance before it condemns it as waste.¹⁶

If the tenant has the right to mine, the property in the minerals, when severed, is in him, and he has the right to sell and dispose of them, for if the severance is not waste the sale is not waste.¹⁶¹

Co-owners. It has been settled that, as between co-parceners, joint tenants and tenants in common, the working of a mine in the ordinary way is not destructive waste which will be restrained, though it involves a consumption of part of the inheritance. The law favors the profitable holding of land.¹⁷

There is no such thing as ordinary waste between tenants in common,¹⁸ though there may be destructive waste, such as working a mine improperly, or cutting timber unseasonably. Consequently an injunction will not be granted against one co-tenant, on the application of another, for ordinary waste, though an injunction has been

¹¹ *Thomas v. Jones*, (1842) 1 Y. & C. Ch. 510.

¹² *Lewis Bowle's Case*, (1616) 11 Co. Rep. 79b: See notes on this case, usually cited as the leading authority as to the powers of limited owners of land, in *Tudor's L. C. on Real Property and Conveyancing*, 3rd Ed., 49.

¹³ Per Lord Eldon, in *Rowe v. Wood*, (1822) 2 J. & W. 556.

¹⁴ The Judicature Act, R. S. O., (1897) c. 51, s. 53, s.-s. 2.

¹⁵ *Patterson v. Central Canada L. Co.*, (1898) 29 O. R. 134; following *In re Cartwright*, (1889) 41 Ch. Div. 532.

¹⁶ Per Bowen, L.J., in *Dashwood v. Magniac*, (1891) 3 Ch. 360.

¹⁶¹ *Lewis v. Gordon*, (1888) 15 O. R. 252.

¹⁷ *Dashwood v. Magniac*, (1891) 3 Ch. 360.

¹⁸ *Goodwyn v. Spray*, (1786) 2 Dick. 667; *Smallman v. Onions*, (1792) 3 Bro. C. C. 621.

granted on such an application for malicious injury, amounting to destructive waste.¹⁹

In *Job v. Potten*²⁰ it was decided not to be destructive waste for a tenant in common of a coal mine to get, or to license another to get, the coals, should the working tenant not appropriate to himself more than his share of the proceeds.

The plaintiff, a tenant in common of a coal mine, had notice of a negotiation which was followed by a lease for three years, in which he did not join, by his two co-tenants, dated in December, 1865, of two undivided thirds of the coal, with a license to work the coal. Under this license some coal, but considerably less than two-thirds of the whole was raised, and one-third of the royalty was kept by the licensee for the plaintiff. A negotiation for a further license was on foot, when, in October, 1872, the plaintiff filed a bill against his co-tenant and the licensee, praying for an inquiry as to the value of the coals raised and an account against all the defendants as trespassers, and for an injunction and receiver and for damages. It was held that the working was not a trespass, and the plaintiff elected to dismiss the bill with costs against his co-tenants, and a decree went against the licensee for an account of the value at the pit's mouth of the coal raised, less cost of getting and raising, and for payment of one-third to the plaintiff.

Bacon, V.C.,²¹ said: "Mr. Jones has done nothing tortious, neither larcenous nor negligent, but in the assertion, as I conceive, of the exercise of a strict right, has brought this coal to the surface, has accounted to the two co-tenants for what he and they agreed was its value, and he is accountable to the plaintiff for what shall appear to be its value, subject to those deductions."

In Ontario it has been decided that one tenant in common will be restrained at the suit of a co-tenant for digging earth for bricks on the joint property.²²

Any co-parcener, joint tenant or tenant in common of a mining property has a right to enter upon, occupy, and work the property,

¹⁹ *Hole v. Thomas*, (1802) 7 Ves. 589, per Lord Eldon; followed in *Arthur v. Lamb*, (1865) 2 Dr. & Sm. 428; see *Bailey v. Hobson*, (1869) L. R. 5 Ch. 180. See also *Wilkinson v. Haygarth*, (1847) 12 Q. B. 837.

²⁰ (1875) L. R. 20 Eq. 84.

²¹ At p. 97.

²² *Dougall v. Foster*, (1853) 4 Grant 319 (per Blake, C., and Spragge, V. C., Esten, V. C., dissenting; followed by Spragge, C., in *Goodenough v. Farquhar*, (1873) 19 Grant, 614; see also *Bishop of London v. Web*, (1718) 1 P. W. 527.

and to interfere with the legitimate exercise of this right would be to deny an essential quality of the title.²³

Where there is not actual ouster or exclusion the only remedy by one tenant in common against another, so using the common property, is an action for an account²⁴ against the co-owner who has received more than his share,²⁵ or he may proceed by partition.²⁶

The remedy under the statute of Anne²⁷ is not an action for money had and received, but an action of account, in which all just allowances may be made.²⁸

One tenant in common can not maintain an action against his co-tenant for contribution to expenditures upon the common property unless there is an agreement express or implied by the latter to contribute to such expenditures. Nor has the former any lien²⁹ for moneys so expended.³⁰

As observed by Lindley, L.J.,³¹ tenancy in common is a tenure of an inconvenient nature, and is unfit for persons who can not agree among themselves.

The owners of contiguous estates, who were tenants in common of the mines beneath, have been held equally entitled to the landing rent paid on foreign coal raised through a shaft which had been constructed by a lessee of the mines, but which was made in the separate property of the defendant.³²

Where there is partnership both in the mine and in the working and profits thereof the general law of partnership, except as modified by statute, applies.³³

The liabilities and risk incident to such a state of affairs are so great that usually a joint stock company is incorporated.

²³ Per Blake, C., in *Dougall v. Foster*, (1853) 4 Gr. 323; *Henderson v. Eason*, (1851) 17 Q. B. 701.

²⁴ Under 4 Anne, ch. 16.

²⁵ *Denis v. Shuckburgh*, (1840) 4 Y. & C. 42; *Jacobs v. Seward*, (1872) L. R. 5 E. & I. Ap. 464.

²⁶ *Dougall v. Foster*, (1853) 4 Gr. 324.

²⁷ 4 Anne, c. 16, s. 27.

²⁸ *Thomas v. Thomas*, (1850) 5 Exch. 28.

²⁹ *Leigh v. Dickeson*, (1884) 15 Q. B. D. 60.

³⁰ *Kay v. Johnston*, (1856) 21

Beav. 536; *Teasdale v. Sanderson*, (1864) 33 Beav. 534; see also *Dent v. Dent*, (1861) 30 Beav. 363.

³¹ In *Leigh v. Dickeson*, (1884) 15 Q. B. D. 69.

³² In *Clegg v. Clegg*, (1861) 3 Giff. 322.

³³ As to mining partnership in British Columbia, *vide* "Mineral Act," Part III., *infra*, c. XVIII. See, however, the dictum of Sir John Leach in *Fereday v. Wightwick*, (1829) 1 R. & M. 49. Re German Mining Co., (1853) 4 De G. M. & G. 41.

Where mining property, whether freehold or leasehold, is purchased with partnership funds for partnership purposes, it is well settled that such property is regarded as part of the stock in trade of the partnership, and has to every intent the quality of personal estate.³⁴

Where there is co-ownership of the mine and partnership in the working thereof only, the rights and liabilities of the parties are governed partly by the law of partnership and partly by the law of co-ownership.³⁵

In *Prendergast v. Thurton*³⁶ a so-called joint stock company was established to work a mine, and certain calls were made as to which there was a question whether they were validly made or not. The plaintiff declined to pay those calls, and there was a delay of nine years, which might be made up to eleven years. Vice-Chancellor Knight Bruce, L.J., said:³⁷ "This is a mineral property, a property therefore of a mercantile nature, exposed to hazard, fluctuations, and contingencies of various kinds requiring a large outlay, and producing perhaps a considerable amount of profit in one year and losing it the next. It requires, and of all properties perhaps the most requires, the parties interested in it to be vigilant and active in asserting their rights. This rule, frequently asserted by Lord Eldon, is consonant with reason and justice. Lord Eldon always acted upon it, and it has been followed by subsequent Judges of great knowledge, experience and eminence." It was held, upon the ground of the peculiar nature of a mining concern, that the plaintiff had no right to stand by and wait till it appeared clearly that it was worth his while, and then come and assert his interest in the mine.

In the case of co-ownership there is a right to partition, though in certain cases, in the partition proceedings, a sale may be directed, whereas in case the mine is partnership property any partner may insist upon a sale. It is a fundamental principle that it is implied in

³⁴ *Crawshay v. Maule*, (1818) 1 Swanst. 495; *Fereday v. Wightwick*, (1829) 1 R. & M. 49. *Re Phillips v. Phillips*, (1832) 1 Myl. & K. 649; *Darby v. Darby*, (1856) 3 Drew. 506; *Steward v. Blakeway*, (1869) L. R. 4 Ch. 609.

³⁵ *Bentley v. Bates*, (1840) 4 Y. & C. 182; *Wynget v. Heathcote*, (1840) 4 Y. & C. 187; *Crawshay v. Maule*,

(1818) 1 Swanst. 495; *Jeffreys v. Smith*, (1820) 1 J. & W. 298; *Roberts v. Eberhardt*, (1853) Kay, 159; *Wild v. Milne*, (1859) 26 Beav. 504.

³⁶ (1841) 1 Y. & C. Ch. 98; followed by *Kay, J.*, in *Rule v. Jewell*, (1881) 18 Ch. D. 666.

³⁷ At page 110.

every contract of partnership, that, quite independently of any express stipulations contained in the contract of partnership, at the dissolution of the partnership all the property of the partnership, whether it is personal or real, whether it is stock in trade or leasehold or freehold, is to be sold, and the net proceeds, after satisfying the partnership debts and all the partnership liabilities, are to be divided amongst the partners.³⁶

The Relative Rights and Duties of the Mine Owner and the Surface Owner were considered in *Re Williams v. Groucott*,³⁷ where Cockburn, C.J., says: ³⁸ "The question is certainly a nice and also a novel one, namely, whether, when a mine has been severed from the ownership of the surface soil, with license to the owner of the mine to sink a shaft through the surface, it is incumbent upon him to protect the owner of the surface against injury to his cattle by reason of the shaft, or whether it rests with the owner of the surface to protect them against it himself. On this subject there is no positive law, or statutory enactment, or mining custom, and in the actual case there is no stipulation as to the duty of fencing the shaft. . . . I am of opinion that it is more reasonable to expect that the man whose act produces the danger should do all that is reasonably necessary to prevent injurious consequences to the owner of the surface soil, who does not know that a shaft will be sunk, or, if so, when or where it will be sunk."

In the same case Blackburn, J., says: ³⁹ "Now, looking at the general rule of law, that a man is bound to use his property so as not to injure his neighbor, it seems to me, that when a party alters things from their normal condition so as to render them dangerous to already acquired rights, the law casts on him the obligation of fencing the danger, in order that it shall not be injurious to those rights."

In *Great Laxey Mining Company v. Clague*,⁴⁰ the distinction between an action against a wrongdoer for a trespass, or against a person negligently and improperly exercising a right so as to injure another, and an action against a person exercising his rights not negligently or improperly, but subject to a condition that he should pay compensation for damage done, is pointed out, and it was held that the party receiving such compensation is thereby put in as good a

³⁶ Per Bowen, L. J., in *A. G. v. Allesbury*, (1885) 16 Q. B. D. 437.

³⁷ (1863) 4 B. & S. 149; considered in *Great Laxey Mining Company v. Clague*, (1878) 4 App. Cas. 115.

See also *Sybray v. White*, (1836) 1 M. & W. 435.

³⁸ At p. 155.

³⁹ P. 157.

⁴⁰ (1878) 4 App. Cas. 115.

position as if the damage of which he complained had never been done, and that after receiving such compensation he will have no right of action for any subsequent damage he may suffer from the same cause.

Employer's Liability. It was held in *Brydon v. Stewart*⁵ that a master is bound to take all reasonable precautions to secure the safety of his workmen. It is no answer to the claim of damages by the surviving relatives of a workman accidentally killed in a mine, "which was not in a safe and sufficient state," to say that he was at that moment of time in the act of leaving the work for a purpose of his own. The master who lets the workman down his mine is bound to bring him up safely, even though he come up for his own business, and not for that of his master. Lord Cranworth, L.C., said:⁶ "Not only is there that responsibility by the law of Scotland, but clearly also by the law of England, which is thought to be less strict on this point. A master by the laws of both countries is liable for accidents occasioned by his neglect towards those whom he employs."

Miners are entitled to the benefit of "The Workmen's Compensation Act"⁷ in Ontario, and "The Employers' Liability Act"⁸ in British Columbia, in the light of which the common law liability of employers to their workmen must now be read.

Statute of Limitations As pointed out by Sir W. Grant, M.R., in *Seaman v. Vawdrey*,⁹ mines are frequently purchased or reserved, not only without any view to their immediate working, but for the express purpose of keeping them unwrought.

The relinquishment of the right to work mines cannot, therefore, be presumed from its non-exercise.

Parke, B., in giving judgment in *Smith v. Lloyd*,¹⁰ decided that where the owner of the fee simple of a close, with minerals under it, conveyed the surface reserving the minerals, with the right of entry to get them, and he afterward granted the minerals with such right, mere non-user for more than forty years, no other person having worked or having been in possession of the minerals, was not suffi-

⁵ (1855) 2 Macq., H. L. Scotch, 30.

⁶ At p. 35.

⁷ R. S. O. (1897) c. 160, s. 2, s.-s. 3.

⁸ R. S. B. C. (1897) c. 69, s. 2, s.-s. 3.

⁹ (1809) 16 Ves. 392.

¹⁰ (1854) 9 Exch. 562, at page 572;

see also *Hodgkinson v. Fletcher*, (1781) 3 Doug. 31; *Adair v. Shaftoe*, (1812) 19 Ves. 156; *Norway v. Rowe*, (1812) 19 Ves. 156; *Keyse v. Powell*, (1853) 2 E. & B. 132; *Low Moor Co. v. Stanley*, (1875) 34 L. T. N. S. 186.

cient under 3 & 4 Will. IV. c. 7, ss. 2 and 3, to bar the grantee's right of entry to get the minerals. That statute does not apply to cases of actual possession by the plaintiff, but to those acts only where he was out of and another party in possession for the prescribed time; for there must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be protected, to bring the case within the statute. We entirely concur in the judgment of Blackburn, C.J., in *Macdonnell v. McKinty*,⁴ and the principle upon which it is founded.

So in *Ashton v. Stock*.⁵ The facts were, that the plaintiffs were seized in fee of lands to which their predecessors derived title under a conveyance in the reign of Queen Elizabeth, wherein the grantor reserved to himself and his heirs male a rent-charge of 7s. 8d., and which contained a proviso that the grantee and his heirs should not dig or get any coal upon the lands for sale, but only such as should be burned or employed thereon. The defendant, claiming title under a demise from a descendant of the same grantor, had for more than twenty years worked from mines of his own under adjacent lands—into, and had taken coals from, the mines under the plaintiff's land. And it was held, first, that the proviso in the original conveyance was not a repugnant condition, and that it did not affect the amount of damages which the plaintiffs were entitled to claim as under it the grantee was still entitled to get all the coal for his own use, though not to sell it; secondly, that the defendant had not acquired any title to the mine by possession under the Statute of Limitations, and that the plaintiffs were entitled to an injunction with an account for six years, and, thirdly, that, as the defendant had been working under a *bona fide* belief as to his title, he was entitled, in taking the account, to an allowance of his expenses of severing the coal as well as bringing it to bank.

The owner of the minerals would be dispossessed if they were worked either by the owner of the surface or a stranger.⁵¹

User by a stranger of a portion of the surface of land containing minerals has been held sufficient, to give a title, under the statute, not only to the surface, but also to the minerals thereon.⁵²

Possession of part of a mine, in the absence of possession of the

⁴ (1847) 10 Ir. L. R. 514; also approved in *Agency Company v. Short*, (1888) 13 App. Cas. 799.

⁵ (1877) 6 Ch. Div. 719.

⁵¹ *Rich d. Lord Cullen v. Johnston*, (1745) 2 Stra. 1142.

⁵² *Seddon v. Smith*, (1877) 36 L. T. N. S. 168.

surface, will only give title under the statute to such part, and not to the continuous vein.⁵²

The Real Property Limitation Act⁶ is substantially a reproduction of the English legislation, the period of 20 years fixed by 3 & 4 Wm. IV. (Imp.) 1833, c. 27, s. 2, which was reduced to 12 years by the Real Property Limitation Act, 1874,⁷ being further reduced in Ontario to 10 years.

To bar the title of the true owner under this Act, there must be not only want of possession by him, but also actual and continued possession, whether adverse or not, by the party claiming.

In *Thew v. Wingate*,⁸ and *Smith v. Stocks*,⁹ there was such actual possession by the person claiming as was held sufficient to bar the original owners.

Way Leave. In *Phillips v. Homfray*¹¹ the defendants were held liable for wrongfully conveying coals through the plaintiff's property, and damages were assessed by an inquiry as to what was proper to be paid for way leave.

Specimens of the ores, minerals and other products of any mine being worked in Ontario are required,¹² on request, to be furnished by the respective owners of such mines for the School of Practical Science and the museum established in connection therewith, and in default the owners are liable to a fine.

Rights, duties and liabilities arising in the working of mines are discussed in regard to Support in Chapter IX. (*infra*); in regard to Water in Chapter X. (*infra*); in regard to Air, in Chapter X. (*infra*).

The Statutory Mining Regulations¹⁰ in force in the various parts of Canada are printed and commented on as follows: Those relating to mines in Ontario, Chapter XIV.; Quebec, Chapter XV.; New Brunswick, Chapter XVI.; Nova Scotia, XVII.; British Columbia, XVIII.; Territories of the Dominion, XIX.¹⁰

⁵² *Earl of Dartmouth v. Spittle*, (1871) 24 L. T. N. S. 68; *Ashton v. Stock* (*supra*); *McDonnell v. McKinty* (*supra*).

⁶ R. S. O., 1897, c. 133.

⁷ 37 & 38 Vict. (Imp.) c. 57, s. 1.

⁸ (1862) 10 B. & S. 714.

⁹ (1869) 10 B. & S. 701.

¹¹ (1871) L. R. C. Ch. 780.

¹² By R. S. O. (1897) c. 30C, s. 5.

¹⁰ See Index.

CHAPTER VII.

ALIENS AND FOREIGN CORPORATIONS.

As to Aliens.

The exclusive statutory jurisdiction respecting "naturalization and aliens" resides with the Parliament of Canada,¹ but in each Province the respective Legislative Assemblies thereof have exclusive statutory jurisdiction respecting "Property and Civil Rights in the Province."²

The capacity of aliens to take and hold land within the Dominion of Canada, though not comprised in any Province thereof, and in the various Provinces thereof, is as follows:

Throughout Canada. "Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject; and a title to real and personal property of any description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject."³

This legislation undoubtedly applies to all Dominion lands, and enables aliens to hold lands in the Territories and also in the various Provinces, at all events if there is no conflicting provincial legislation.

In Ontario. "On and from the 23rd day of November, 1849, every alien shall be deemed to have had, and shall hereafter have, the same capacity to take by gift, conveyance, descent, devise, or otherwise, howsoever, and to hold, possess, enjoy, claim, recover, convey,

¹ B. N. A. Act, (1867) s. 91, s.-s. 25.

² B. N. A. Act, (1867) s. 92, s.-s. 13.

³ R. S. C. (1886) c. 113, s. 3.

devise, impart and transmit real estate in this Province, as natural-born or naturalized subjects of Her Majesty,"⁴

"The real estate in Ontario of an alien dying intestate shall descend and be transmitted as if the same had been the real estate of a natural-born or naturalized subject of Her Majesty."⁵

"Nothing herein contained shall alter, impair or affect, or be construed to alter, impair or affect in any manner or way whatsoever, any right or title legally vested in or acquired by any person or persons whomsoever before the 23rd November, 1849."⁶

In Quebec. Aliens have a right to acquire and transmit by gratuitous or onerous title, as well as by succession or by will, all movable and immovable property in Lower Canada in the same manner as British-born or naturalized subjects.⁷

In New Brunswick. The General Mining Act⁸ provides that aliens as well as British subjects may enjoy the benefit of the Act by complying with its provisions and submitting thereto.

In Nova Scotia. Aliens may take, hold and convey and transmit real estate,⁹¹ and trust companies or corporations having a legal status in any foreign state may hold real estate by way of mortgage or otherwise in furtherance of any trust they may assume in connection with any enterprise or undertaking within the Province of Nova Scotia, with full power to such companies or corporations to convey and transfer the same,⁹² and no title to real estate shall be invalid on account of the alienage of any former owner or holder thereof,⁹ or because the same was formerly owned or held by a foreign corporation.⁹¹

The children and grandchildren of natural-born British subjects, though born in a foreign country, are not aliens, and are, therefore, capable of transmitting real estate in this Province by descent and otherwise. Where there is a failure of inheritable blood by reason of alienage, the lands do not escheat, but go to the next heir.⁹²

The law requires strict proof from the parties who set up an alienage as against title.⁹³

⁴ R. S. O. (1897) c. 118, s. 1.

⁵ *Ib.* s. 2.

⁶ The date when the original Act came into force. *Ib.* s. 3.

⁷ Article 25 of the Quebec Civil Code.

⁸ S. 3; passed 16th April, 1891. See Chap. XVI. *infra*.

⁹¹ S. 1 of c. 86 of the Revised Statutes of Nova Scotia, 5th series.

⁹² Acts of 1891, s. 1.

⁹ *Ib.* s. 2.

⁹¹ Acts of 1891, c. 20, s. 2.

⁹² *Salter v. Hughes*, (1864) 5 N. S. R. 409; 1 Old. 409.

⁹³ *Williams v. Myers*, (1871) 8 N. S. R. 157; 2 N. S. D. 157.

In British Columbia. "Every alien shall be deemed to have had, and shall hereafter have the same capacity to take, hold, enjoy, recover, convey and transmit title to land and real estate of every description in this Province, as if he were a natural-born British subject, and no person shall be disturbed in the possession or precluded from the recovery of any lands or real estate in this Province by reason only that some person from or through whom he may derive his title was an alien."¹⁰

The real estate in this Province of an alien dying intestate shall descend and be transmitted as if the same had been the real estate of a natural-born or naturalized subject of Her Majesty.¹¹

Any alien, upon making a declaration in the prescribed form of his intention to become a British subject, may record unsurveyed Crown lands.¹²

Special provisions were made by the Chinese Regulation Act¹³ as to the sum payable by a Chinese for a free miner's certificate, and it was also provided, "Any Chinese who shall be found mining for gold and precious metals, or following the ordinary occupation of a free miner, whether on his own account or for others, without having in his possession a free miner's certificate, lawfully issued to him subsequently to the passage of this Act, and any person who shall employ any Chinese in and about gold mining, who has not in his possession such a certificate, shall forfeit and pay a sum not exceeding \$30."¹⁴

This provision was held to be *ultra vires* in *Regina v. Wing Chong*,¹⁵ and has been omitted from the Revised Statutes of 1897.

"No Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground."²

It was held by the Supreme Court of British Columbia in re The Coal Mines Regulation Amendment Act, 1890,³ that the above provision was within the constitutional power of the Provincial Legislature as being a regulation of coal mines, and was not *ultra vires* as an interference with the subject of aliens.

¹⁰ R. S. B. C. (1897) c. 6, s. 2.

¹¹ *Ib.*, s. 3.

¹² See "Land Act," R. S. B. C. c. 113, s. 5.

¹³ (1888) Con. Stat. B. C., c. 18, s. 14.

¹⁴ S. 15.

¹⁵ 1 B. C. R. (part 2) 150.

² See "Coal Mines Regulation Act, R. S. B. C. (1897) c. 138, s. 4, formerly "The Coal Mines Regulation Amendment Act, 1890."

³ (1896) 5 B. C. R. 306; an appeal from this decision to the Supreme Court of Canada was quashed. The judgment is not yet reported.

As to Foreign Corporations.

The comity of nations distinctly recognizes the right of a foreign incorporated company to carry on business and make contracts without the country in which it is incorporated, if consistent with the purposes of the corporation, and not prohibited by its charter, and not inconsistent with the local laws of the country in which the business is carried on, subject always to the restrictions and burthens imposed by the laws enforced therein.⁴

In all the Provinces, except Quebec, and in the Territories of Canada, the Statutes of Mortmain⁴¹ are in force, except as modified by Canadian or provincial legislation.

In Ontario. Under the Statutes of Mortmain⁴¹ an alienation in mortmain is voidable only, and not void, and where lands are held in free and common socage, the lands so aliened can only be forfeited by the Crown, and that only after office found.⁵

The effect of these statutes upon the rights of corporations is stated by Sstreet, J.,⁶ to be that a conveyance to a corporation (not expressly forbidden by their charter to take lands at all) without a license to take in mortmain will vest the lands in the grantees, subject to the right of the Crown to enter and declare the land forfeited.

In this case⁷ the opinion was expressed that an Act might be passed by the Dominion Parliament that a license from the Crown should not be necessary to enable any corporation to hold lands within the Dominion.

"Such a law would not prevent the Provinces from passing laws preventing altogether or restricting and regulating the holding of lands by corporations in such Provinces. It would be merely an abnegation on the part of the Crown of its prerogative right to require a license."⁷

The Provincial Legislatures having exclusive jurisdiction over

⁴ *C. P. R. v. Western Union Telegraph Co.*, (1889) 17 S. C. R. 151, at p. 155.

⁴¹ See *ante*, p. 5, note 11.

⁵ *Per Armour, C.J., McDiarmid v. Hughes*, (1888) 16 O. R. 570, at p. 576. See, however, *R. S. O. 1897, c. 114*, allowing the Attorney-General to take possession of lands

forfeited for any cause except crime, or in case possession is withheld, to cause an action to be brought for the recovery thereof without any inquisition being necessary.

⁶ *Ib.* p. 579.

⁷ *Ib.*, per *Armour, C.J.*, p. 577.

"property and civil rights,"⁸ may impose conditions and restrictions upon foreign corporations holding lands or mining rights in the various Provinces.

The Ontario Companies Act⁹ provides that any company incorporated otherwise than by or under the authority of an Act of the Legislature of Ontario, desiring to carry on any of its business, which is within the scope of the Companies Act, within the Province of Ontario, may petition the Lieutenant-Governor in Council for a license so to do, who may thereupon authorize such company to use, exercise and enjoy any powers, privileges and rights set forth in such license.

Before the license is issued a verified copy of the Act, charter or other instrument incorporating the company, must be deposited with the Provincial Secretary, together with a duly executed power of attorney, empowering some person named therein and residing in Ontario to act as its attorney.

Notice of the license must be published in the Ontario Gazette, and the license, or an exemplification thereof under the Great Seal of Ontario, is made sufficient evidence in any Court in the Province of the due licensing of the company.

Certain returns must be made to the Provincial Secretary on or before the 8th of February in every year, in default of which the company and its officers, who knowingly and wilfully authorize or permit such default, incur a penalty of \$20 for every day during which the default continues.

Power is given to the Lieutenant-Governor in Council to suspend or revoke the license by Order in Council, if the company refuses or fails to comply with the provisions of the section.

The statutory provisions as to Extra Provincial Mining Companies¹⁰ are printed in Appendix I.

There is no enactment expressly prohibiting a company incorporated elsewhere than in Ontario doing business in the Province, but to enable such a company to hold mining property, i.e., real estate, in the Province, it is necessary that the license provided for should be obtained. This rule clearly applies to companies incorporated by the other Provinces of Canada, but whether the case of a Dominion incorporation constitutes an exception is doubtful.

It would seem to follow from the opinion of the Queen's Bench Divisional Court in *McDiarmid v. Hughes*¹ that such a license is not

⁸ Ss. 13, s. 92, of the B. N. A. Act, 1867.

⁹ R. S. O. (1897) c. 191, s. 107.

¹⁰ R. S. O. (1897) c. 197, ss. 10, 11.

¹ *Supra*.

necessary to entitle a Dominion company to hold lands in the Province, but that opinion was not made the basis of the decision of the Court and can scarcely be reconciled with the decisions of the Privy Council as to the executive and legislative powers of the Provinces, and as to the relation between the Crown and the Provinces.

The decision of the Privy Council in *Liquidators Maritime Bank v. Receiver-General*,² "That a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of Provincial Government as the Governor-General is for all purposes of Dominion Government"; and the dictum of Sir Montagu Smith in *Citizens Insurance Co. v. Parsons*³ appear to point the other way.

The point was discussed but not decided in *The Colonial Building and Investment Association v. Attorney-General of Quebec*.⁴

In Quebec. A corporation, whether merely trading or not, and whether foreign or domestic, is incapacitated from acquiring as well as from holding lands without the consent of the Crown being first obtained.

For the purposes of this rule, all mining companies incorporated elsewhere than in Quebec, including companies incorporated under Imperial Acts, by the Dominion Government, and by the other Provinces would be considered foreign companies.

In Nova Scotia corporations having a legal status in any foreign state may hold real estate by way of mortgage or otherwise in furtherance of any trust they may assume in connection with any enterprise or undertaking within the Province, with full power to convey and transfer the same.⁵¹

In New Brunswick. Where, in an action of trespass, title is set up under a deed from a foreign corporation, there must be proof of the creation of the corporation in the country in which it professes to have been incorporated.⁵²

In the District of Yukon. The Placer Mining Regulations of 18th January, 1898, define "Joint Stock Company" to mean "any

² (1892) A. C. 443.

³ (1881) 7 App. Cas. 117.

⁴ (1883) 9 App. Cas. 157, at p. 166.

⁵ *Chaudiere Gold Mining Co. of Boston v. Desbarats*, (1873) L. R. 5 P. C. 277; *Colonial Building & In-*

vestment Assn. v. Attorney-General of Quebec, (1883) 9 App. Cas. 166.

⁵¹ Acts of 1891, c. 20, s. 1.

⁵² *Young v. Milne*, (1889) 28 N. B. R. 186.

company incorporated for mining purposes under a Canadian Charter or licensed by the Government of Canada."

In British Columbia. "Extra Provincial Company" is defined to mean a duly incorporated company other than a company incorporated under the laws of the Province of British Columbia.⁶

"Unless otherwise provided by any Act, no Extra Provincial Company having gain for its purpose and object shall carry on any business within the scope of this Act in this Province unless and until it shall have been duly licensed or registered under this Act, and thereby become expressly authorized to carry on such of its business as is specified in the license or certificate of registration, and no company, firm, broker or other person, shall, as the representative or agent of, or acting in any other capacity for any such Extra Provincial Company, carry on any of its business within this Province until such company shall have obtained such license or certificate of registration; and any such company which fails or neglects to obtain such license or certificate of registration shall incur a penalty of \$50, recoverable upon summary conviction, for every day during which it carries on business in contravention of this section; provided that this section shall not apply until the first day of January, 1898, to any Extra Provincial Company carrying on business within this Province on the date of the passage of this Act, and further provided that proof as to compliance with this section shall at all times be upon the company.⁷

"Any Extra Provincial Company, duly incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, duly authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may obtain a license from the registrar authorizing it to carry on business within this Province on compliance with the provisions of this Act, and on payment to the registrar in respect of the several matters mentioned in the table marked B in the first schedule hereto the several fees therein specified, and shall, subject to the provisions of the charter and regulations of the company and to the terms of the license, thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act.⁸

⁶ "Companies Act," R. S. B. C.
(1897) c. 44, s. 1.

⁷ S. 123.
⁸ S. 124.

"Before the issue of a license to any such Extra Provincial Company, the company shall file in the office of the registrar:—

(a) A true copy of the charter and regulations of the company, verified in manner satisfactory to the registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia;

(b) An affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter;

(c) A copy of the last balance sheet of the company and auditor's report thereon;

(d) A duly executed power of attorney, under its common seal, empowering some person therein named, and residing in the city, or place where the head office of the company in this Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded in any Court, and generally on behalf of such company and within the Province, to accept service of process and to receive all lawful notices, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney, and such company may from time to time, by a new or other power of attorney executed and deposited as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the registrar."⁹

Provision is also made as to what the license shall contain and for publication thereof.¹⁰

The Lieutenant-Governor has power to revoke licenses.¹

"Any Extra Provincial Company duly authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may register the company as a company under this Act on compliance with the provisions thereof, and on payment to the registrar in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, and such company shall, subject to the provisions of the charter and regulations of the company, and of this Act thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act."²

⁹ S. 127.

¹⁰ S. 128.

¹ S. 131.

² S. 132.

Winding Up. The application of "The Winding-up Act"³ to foreign corporations doing business in Canada, was discussed in *Merchants Bank of Halifax v. Gillespie*,⁴ and in *Allen v. Hanson* in *Re Scottish-Canadian Asbestos Co.*⁵

Where a winding-up order was made under the Act by the Supreme Court of New Brunswick, of an insolvent company having offices in London, England, and in the Provinces of Quebec and New Brunswick, the Supreme Court of Nova Scotia held, on an appeal by the liquidator, against an attachment issued in Nova Scotia, by a creditor, after the making of the winding-up order, upon assets of the company in Nova Scotia, in transit, that the claim in question was clearly one which could be dealt with in the winding-up proceedings, and that the provisions of "The Nova Scotia Judicature Act,"⁶ in relation to foreign corporations doing business by an agent within the Province, refers only to companies carrying on a regular and continuous business, and not to companies which have merely a few isolated business transactions.⁷

³ R. S. C. (1886) Ch. 129.

⁴ (1884) 10 S. C. R. 312.

⁵ (1890) 18 S. C. R. 667.

⁶ Order 47, R. 1.

⁷ *Salter v. St. Lawrence Lumber Co. (Ltd.)*, (1896) 28 N. S. R. 335.

CHAPTER VIII.

SALES, DOWER, MORTGAGES, ETC.

Grants Generally. *Prima facie*, the owner of the land has everything under the sky down to the centre of the earth.¹

The general presumption of law is: *Cujus est solum, ejus est usque ad coelum et ad inferos*.

This presumption may, however, be rebutted as has been shown.¹¹

In *Keyse v. Powell*,² Lord Campbell, C.J. (for the Court) said: "The surface and the minerals may be dissevered in title, and become separate tenements, as appears abundantly from the cases cited, *Curtis v. Daniel*,³ and *Humphries v. Brogden*.⁴ But the presumption is to the contrary. . . . And in *Lewis v. Branthwaite*,⁵ . . . Littledale, J., adds: 'It is not disputed that a freeholder, or one holding under him, for life, for years, or at will, has possession of the soil from the surface to the centre of the earth,' " etc.

In *Low Moor Co. v. Stanley Co.*,⁶ the effect of a bargain and sale of minerals to a man, his executors, administrators and assigns, was held to create a tenancy at will, the deed not having been enrolled, but having been followed by possession of the seams of coal, gave the tenant a good title so as to enable him to maintain an action of trespass against wrongdoers.

In Ontario all corporeal tenements and hereditaments, as regards the conveyance of the immediate freehold thereof, are deemed to lie in grant as well as in livery.⁸

¹ Per Bowen, L.J., *Pountney v. Clayton*, (1883) 11 Q. B. D. 838. Art. 414 of the C. C. of Lower Canada provides, that "ownership of the soil carries with it the ownership of what is above and what is below it."

¹¹ See *ante*, p. 55.

² (1853) 2 E. & B. 144.

³ (1808) 10 East, 273.

⁴ (1848) 12 Q. B. 739.

⁵ (1831) 2 B. & Ad. 437.

⁶ (1876) 34 L. T. N. S. 186.

⁸ R. S. O., 1897, c. 119, s. 2.

This is likewise the case in British Columbia and the North-West Territories.⁹

When the ownership of the surface is severed from the ownership of the subjacent mines or strata of minerals, such mines or strata are corporeal hereditaments, and in Ontario, British Columbia and the North-West Territories lie in grant.

A right to work mines is an incorporeal hereditament lying in grant.¹⁰

In Quebec it has been decided that an unreserved sale of an immovable conveys all mining rights in the same, subject to the provisions of the Quebec mining law, and an action will lie to resiliate such sale, or for an indemnity, by a purchaser who subsequently discovers that a reserve of such mining rights exists in favor of his vendor's authors.¹

The Surface means not the mere plane surface, but all the land except the mines. The rights of such surface owners where there are minerals are as follows: First, there may be the surface owner, who may have both the surface and the mines; secondly, there may be the surface owner who is entitled to the ordinary right of support, not because there is a deed, but because it is not known what was the origin of the severance; thirdly, there may be the surface owner who has the right to support, created by the document which effected the severance, and in that case the extent of the right of support must depend on the terms of the document, and their true construction; fourthly, there may be the surface owner, who has no right to support at all, because he has given it away.²

It is settled law that where minerals are severed from the surface by deed, instrument or Act of Parliament, the mineral owner is not entitled to let down the surface unless by the deed, instrument or Act of Parliament by which the minerals are severed it appears that the surface owner has parted with the right of support, or, in other words, that the mineral owner's right to get the minerals is thereby limited to getting them in such a manner as not to occasion injury to the surface owner.³

⁹ See s. 2 of the English Real Property Act, 1845, 8 & 9 Vict. c. 106, which is in force there; see R. S. B. C. (1897) p. lili.

¹⁰ *Sutherland v. Heathcote*, (1892) 1 Ch. 475.

¹ *Neil v. Proulx*, R. J. Q. 1 C. S. 565; see *Turriff v. Cie de Fer Quebec Central*, R. J. Q. 2 Q. B. 559.

² Per Bowen, L.J., in *Pountney v. Clayton*, (1883) 11 Q. B. D. 838.

³ Per A. L. Smith, L.J., in *London & N. E. Ry. Co. v. Evans*, (1893) 1 Ch. 16, at p. 30; *Caledonia Railway Co. v. Sprot*, 2 Macq. 449; *Bell v. Love*, 10 Q. B. D. 547, 558; *Davis v. Treharne*, 6 App. Cas. 460.

In *Williams v. Bagnall*,⁹ a case in which the right of the surface-owner to support was excluded, Wood, V.C., said:¹⁰ "He grants the whole of the property, which is a grant out and out of the whole from the surface to the centre of the earth; but he makes out of the grant this exception—he excepts and reserves to himself all mines and minerals whatsoever, lying and being in and under the said land and premises hereinbefore described and hereby conveyed (this is a simple exception), and then comes this, as to which there has been a controversy, whether it is to be treated as a reservation or grant by the person taking the grant of the surface. I do not think it is necessary to pursue this point any further, and I take it for the purpose of the case to be a reservation to be construed with reasonable strictness against the person reserving to himself that right against the previous grant of the surface. Having excepted the minerals, he says also 'with full power and authority to and for the said . . . his heirs and assigns, or other the person or persons for the time being, who would have been entitled to the freehold reversion and inheritance of the hereditaments hereby conveyed in case this conveyance had not been made, to get, work, raise, sell and dispose of the same mines and minerals; but without entering upon the said lands and premises, or any part thereof, for such purposes, and without being answerable for any injury whatever that shall or may arise to the said land and premises, or to any buildings which shall at any time hereafter be erected upon the said land, or any part thereof, by reason of the working or getting the said excepted mines from under the same premises, and without being liable to any action or actions, or other suits at law or in equity, costs, charges, losses, damages, or expenses for, or on account of any such injury or damage.' It will not do to say that by reserving to himself the right of working the mines, he would not get the privilege of working them, so as to let down the surface. He has done something more than that, he has reserved to himself the working of the mines without being answerable for any damage to the lands or buildings. That is the whole of the reservation. That entire reservation makes it impossible to construe this instrument as simply reserving to himself the right to work the mines, being answerable, at all events, for any damage to the land or buildings and premises thereon."

¹ "The implication of law is, that when you grant the surface you grant everything necessary to maintain it; but here are words

⁹ (1867) 15 W. R. 275.

¹ P. 275.

¹⁰ P. 275.

which sweep it away . . . the parties have come to a clear agreement that the one man is to have the surface, and he is to have it subject to the condition of the mine being got and raised without the person so working being liable for any mischief that he may do to that which he has granted. He cannot derogate from his grant beyond the extent to which the parties agree he shall. Notwithstanding some dicta that were laid down in the case of *Hilton v. Lord Granville*, it has been held by the House of Lords, in *Rowbotham v. Wilson*, wholly irrespective of the question on which side it is to be taken, whether it is a grant made by a person claiming the right to have a surface support, or whether by a person claiming the right to improve that support to a certain extent under contract; without regard to that it has been held by the House of Lords in that case that a grant is not absolutely repugnant and absurd which grants the surface and yet allows a great degree of injury to be done. . . . The grantee may stipulate that this grant shall be derogated from."

A conveyance granting land for a special purpose must be construed as a conveyance of the rights necessarily incident to the due execution of that purpose.²

It is undoubted law that, where a grant of land is made for a specific purpose, such as the construction on the lands of a house, canal, railway, or other permanent work, the grant, in the absence of a contrary intention appearing on its face, carries with it by implication the right of reasonable and necessary support for the works so to be erected from the subjacent or adjacent lands of the grantor. This maxim of law applies whether the grant is voluntary or under the compulsory powers of a statute.³

A deed of conveyance made under the authority of an Act of Parliament must be read as if the sections of the Act were incorporated in it.⁴

The laws which govern the transfer, descent and devolution of interests in land, by operation of law, and their transmission by will, apply to interests in mines, and in minerals not severed from the freehold, with no distinction requiring special notice.

² *Elliot v. N. E. Ry. Co.*, (1863) 10 H. L. C. 333.

³ *L. & N. Ry. Co. v. Evans*, (1892) 1 Ch. 16, per Bowen, L.J., p. 27; *Elliott v. N. E. R. Co.*, (1863) 10

H. L. C. 333, 357; *Caledonian Ry. Co. v. Sprot*, (1856) 2 Macq. 450.

⁴ *Elliot v. The Directors of the North Eastern Railway Co.*, (1863) 10 H. L. C. 338.

Crown Grants. Where the Crown having the authority to sell agrees to sell public lands, and the contract is not controlled by some law affecting such lands, and there is no stipulation to the contrary expressed or implied, the purchaser is entitled to a grant conveying such mines and minerals as passed without expressed words.⁵

The rule that acceptance is necessary to the operation of a deed applies to a patent from the Crown.⁶

Where plaintiff claimed under a grant from the Crown, containing a condition that the grant should be void if the land was not settled on within a certain time, it was held that a subsequent grant from the Crown for the same locus, under which defendant held, was void, there having been no inquest of office previous to the issuing of such subsequent grant.⁶¹

The Reservation in a Patent from the Crown of land situate on the bank of a river of free access to the bank for all persons, etc., creates an easement merely in favour of the public, notwithstanding which the patentee is a riparian proprietor.⁶²

In *Cooper v. Stuart*⁷ the Privy Council decided that a reservation in a Crown grant in New South Wales of a right to resume such quantity of the land granted not exceeding ten acres, as might be required for public purposes, was not repugnant to the grant and void, and that where put in force it takes effect in defeasance of the estate previously granted, and not as an exception. The rule against perpetuities, even if binding on the Crown in England, was stated by Lord Watson⁸ to be inapplicable to Crown grants in a colony like New South Wales.

Where the nominee of the Crown, before any patent issued for the lands on which he was located, by deed poll conveyed away the lands, and all his interest therein, and afterwards the patent from the Crown was issued in his name, and he then made a second deed to another person, it was held that the second grantee was estopped from claiming the land.⁸¹

⁵ Per Burbidge, J., in *The Canadian Coal and Colonization Co. (Ltd.) v. The Queen*, (1892) 3 Exch. C. R. (Can.) 157, confirmed by the Supreme Court of Canada.

See *the Queen v. The Canadian Agriculture, Coal and Colonization Co.*, (1895) 24 S. C. R. 713.

⁶ *Moffatt v. Scratch*, (1885) 12 A. R. 157.

⁶¹ *Wheelock v. McKeown*, (1835) 1 N. S. R. 41; 1 Thom. (2nd ed.) 41.

⁶² *Hawkins v. Mahaffy*, (1881) 29 Gr. 326.

⁷ (1889) 14 App. Cas. 286.

⁸ P. 294.

⁸¹ *Doe d. Irvine v. Webster*, (1842) 2 U. C. R. 224. See also *Hennessey v. Myers*, (1832) 2 O. S. 424; *Tiffany v. McEwen*, (1837) 5 O. S. 598; *Boulter v. Hamilton*, (1864) 15 U. C. C. P. 125; *McGill v. Shea*, (1846) 2 U. C. R. 483; *Todd v. Cain*, (1858) 16 U. C. R. 516.

A grant from the Crown of land exclusive of the waters of the River Trent, which were reserved together with free access to the shores, etc., does not confer on the patentee the rights of a riparian proprietor.³

Description. As to discrepancy between general and specific description, see *Dixon v. McLaughlin*¹ and *Murray v. Smith*,² where the specific description was held to govern.

In *re Trent Valley Canal, etc.*,³ Boyd, C., said, pp. 162-3: "Having a reasonably accurate particularization of the four boundaries, the quantity of acres must not be regarded as the controlling term of the description."

In *Huntsman v. Lynd*,⁴ Osler, J., said: ⁵ "In the case before us the lands are described in the patent with reference to lots and concessions, and by metes and bounds. The inference, therefore, is that there has been a survey, and unless the contrary plainly appear, that the description has been prepared from such survey." Page 106: "If we reject the particular description, we have the general description of the land as lot 23. This lot appears in the official plans . . . and there being no evidence of any work on the ground inconsistent with the plan, the latter would govern, and would show clearly what the lot or close contained. We have, then, a lot or close granted by a certain name, the position and limits of which are defined upon official plans, and in no other way outside of the patent. Then, should not the particular description, in which the distances for width are given absolutely, and which does not correspond with the plans, be rejected? It appears to me that it should. It is proper also to be considered that from 1797 to the present time the Government have never asserted any claim to the land in question; that on the contrary, they have always assumed that it passed under grant to Mathews."

⁶ "In my opinion the plaintiff is entitled to recover as part of lot 23 all the land up to the township line, and the particular description by metes and bounds contained in the patent should be rejected as *falsa demonstratio*."

Accretion. Land gained by alluvial deposits, arising from natural or artificial causes, or from causes partly natural and partly

³ *Kirchhoffer v. Stanbury*, (1878) 25 Gr. 413.

¹ (1854) 1 E. & A. 370.

² (1848) 5 U. C. R. 225.

⁴ (1886) 12 O. R. 153.

⁵ (1879) 30 U. C. C. P. 100.

⁶ P. 105.

⁷ P. 107.

artificial, accrues to the owner of the adjacent land, if the accretion was in fact gradual and imperceptible.⁷

Incidental Rights. The right of the grantee to the minerals by whomsoever granted, must depend upon the terms of the deed by which they are conveyed or reserved when the surface is conveyed. *Prima facie*, it must be presumed that the minerals are to be enjoyed, and, therefore, that a power to get them must also be granted or reserved, as a necessary incident. It is one of the cases put by Shepard,⁷¹ in illustration of the maxim, "*Quando aliquid conceditur conceditur etiam et id sine quo res ipsa non esse potuit*," that, by grant of mines is granted the power to dig them.⁷²

Royalties paid under a lease of a quarry belong to the vendor as rents and profits, whether under the general law, or under a condition that the vendor shall have the rents and profits.⁸

Under Water Areas. It has been held by the Supreme Court that the ungranted beds of all lakes, rivers and other waters, were under the British North America Act⁹ vested in the Crown in right of the several Provinces, subject only to the exception respecting existing trusts and interests mentioned in that section, and excepting the beds of public harbors, which by the operation of section 108 were vested in the Dominion.

The Court held that in this respect there was no distinction between the various classes of waters, whether salt waters or fresh waters, tidal or non-tidal, navigable or non-navigable, etc.

In the case of non-navigable waters riparian proprietors on one side, whose grants are bounded by the stream, are entitled to the property in the bed of the river to its middle thread.

This rule, however, is not applicable to the Great Lakes of Canada or to the rivers which are *de facto* navigable.¹⁰

Ad Medium Filum. In streams and rivers which are not navigable a description of land which extends to the water's edge, or to the bank carries the grant or conveyance to the thread of the stream, and the description continuing along the water's edge or along the bank will extend along the middle or thread of the stream, unless

⁷ *Standly v. Perry*, (1879) 3 S. C. R. 356; *Cobourg v. Throop*, (1859) 2 A. R. 212; *Buck v. Cobourg*, (1856) 5 U. C. C. P. 552; *A.-G. v. Chambers*, (1859) 4 De G. & J. 67; see *Hindson v. Ashby*, (1896) 2 Ch. 1.

⁷¹ *Touchstone* 5, chap. 9.

⁷² *Rowbotham v. Wilson*, (1860) 8 H. L. C. 360, per Ld. Wenleydale; *Ramsay v. Blair*, (1876) 1 App. Cas. 703.

⁸ *Leppington v. Freeman*, (1892) 66 L. T. 357.

⁹ Section 109.

¹⁰ *The Fisheries Case*, (1896) 26 S. C. R. 444.

there be some words forming part of the description or introduced by way of exception which clearly excludes whatever may lie between the water's edge or the bank and the *medium filum aquae*.¹

In *Lord v. Commissioners of Sydney*,² the law is said to be correctly stated by Mr. Justice Story in *Tyler v. Wilkinson*,³ as follows: "*prima facie*, every proprietor upon each bank of a river is entitled to the land, covered with water, in front of his bank, to the middle thread of the stream, or, as it is commonly expressed *usque filum aquae*."

One of the consequences of the rule that the riparian proprietors on private or non-navigable rivers, lakes and waters, the beds of which had been granted to them, or at least not reserved by the Crown, or its grantee, had an exclusive right of fishing to the middle of those waters, is stated by Girouard, J., in the Fisheries case,⁴ to be undoubtedly the law of all the Provinces.

The soil of the alveus of a non-navigable river is not the common property of the respective owners on the opposite sides, but the share of each belongs to him in severalty, and extends *usque ad medium filum aquae*, but neither is entitled to use it in such a manner as to interfere with the natural flow of the stream.⁵

By the general law of conveyancing, where a riparian owner, who is also owner of the soil under the river *ad medium filum*, makes a grant of his land on the banks of the river, the soil *ad medium filum* passes by the grant, and this applies to land of any tenure, whether freehold⁶ or leasehold.⁷

This presumption does not apply to an award under an Inclosure Act,⁸ and, in every case, not being a *presumptio juris et de jure*, may be rebutted, not only by words in the deed being construed, but also by the circumstances under which the deed was executed.⁹

In *Lord v. Commissioners of Sydney*,¹⁰ the rule was applied to a grant from the Crown, Sir John Coleridge observing:¹ "Upon a

¹ *Kains v. Turville*, (1871) 32 U. C. R. 17, in the Court of Appeal.

² (1859) 12 Moore, P. C. 483.

³ (1827) 4 Mason, U. S. R. 397.

⁴ (1896) 26 S. C. R. 546.

⁵ *Bickett v. Morris*, (1866) L. R. 1 Sc. Ap. 47.

⁶ *Tilbury v. Silva*, (1890) 45 Ch. Div. 98, per Kay, J.

⁷ *Micklethwait v. Newlay Bridge*

Co., (1886) 33 Ch. Div. 133.

⁸ *Esroyd v. Croftland*, 1807, 2 Ch. 554.

⁹ *Devonshire v. Pattinson*, (1887) 20 Q. B. D. 273; *Potts v. Bovine*, (1888) 16 Ont. R. 155; *Doe d. Harrison v. Hampson*, (1847) 4 C. B. 267.

¹⁰ (1859) 12 Moo. P. C. 473.

¹ At p. 497.

question of the meaning of words, the same rules of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown, or from a subject; it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances."²

The rule *ad medium filum* does not apply to navigable waters and, in Canada, the test of legal navigability is not the flux and reflux of the tide, as established by English law, but navigability *de facto*.

In *Barthel v. Scotten*,³ Strong, C.J., says,⁴ referring to land on the Detroit River: "There can be no doubt that situate as this lot 43 is, on a large navigable river, an international waterway, the water's edge forms the western boundary. A grant of land bounded by the banks or edges of such streams does not extend to the middle thread as is the case where lands described as so limited lying on the banks of non-navigable rivers are granted."

In *Dixon v. Snetsinger*,⁵ it was held that the River St. Lawrence and the great chain of lakes were public navigable waters the bed of which had not passed and did not pass under the rule of the common law of England *ad medium filum aquae* to the riparian proprietors, but is vested in the Crown. In the judgment of Gwynne, J., all the previous authorities are collected and commented on, in support of his conclusion that the rule of the civil law, and not that of the common law of England, which is limited to the extent of the flux and reflux of the tide, prevailed.

This case was much discussed in *The Queen v. Moss*,⁶ where it was decided, affirming the judgment of the Exchequer Court, that the title to the bed of the river St. Lawrence is in the Crown, in right of the Province, not in right of the Dominion.

The same principle would apply to the beds of all navigable waters (except harbours)⁷ which have not been granted by the Crown.

In *Parker v. Elliott*⁸ the English common law rule was stated to be inapplicable to Lake Ontario.

In New Brunswick it has been held that a grant of land bounding on a navigable lake conveys the land to the margin only, and not to the centre of the lake.⁹

² Re Trent Valley Canal, (1886) 12 Ont. R. 153.

³ (1895) 24 S. C. R. 367.

⁴ P. 370.

⁵ (1873) 23 U. C. C. P. 235.

⁶ (1896) 26 S. C. R. 322.

⁷ As to "harbours." See B. N. A. Act, sched. 3.

⁸ (1852) 1 U. C. C. P. 470.

⁹ *Niles v. Burke*, (1873) 1 Pug. 237; *Queen v. Robertson*, (1882) 6 S. C. R. 68.

In *Coleman v. Robertson*⁸² Wilson, C.J., said:⁸³ "A grant of land to the river, or margin or edge of it, or to the bank, or along the river, will *prima facie* carry the grant to the *medium filum aquae*; but this description is from a particular point, 'the verge of the river at low water mark,' and thence with the winding of the stream to the place of beginning, that is, to the verge of the stream at low water mark. I do not see, then, why this particular limitation should not be binding just as it is specifically stated. If the grant had been to high water mark there could be nothing whatever from which an intention could be inferred to extend it to low water mark, and still less to carry it further, to the middle of the stream; and the rule of *ad medium filum* is one of presumption only. A river or stream is composed of three parts, the bed, the banks, and the water; and the bed consists of all that part up to high water mark, and the banks of that part of the land which is above high water mark. A grant to high water mark would, in my opinion, exclude the *alveus*, or bed of the stream, altogether; to low water mark it would exclude the grant from extending to the centre thread of the stream, because the grant of a part of the bed will exclude a grant by presumption of more than that part which was expressly given."

Reservations and Exceptions. The owner of land may grant or demise the land, excepting the mines and minerals, or may grant the mines and minerals, excepting or reserving the surface.

The relative rights, duties and obligations of the owners of the surface and of the mines and minerals, may and should be specifically and definitely determined by the statute or instrument of severance.

The general rule may be stated to be, that each must use and enjoy his own property in such a manner as not to injure that of another person.

Lord Coke⁹ points out the distinction "between an exception (which is ever part of the thing granted, and of a thing *in esse*), and a reservation, which is always of a thing not *in esse*, but newly created, or reserved out of the land or tenement demised."

Sheppard, in his *Touchstone*,¹⁰ speaking of a reservation, says: "It must be of some other thing issuing, or coming out of the thing granted, and not a part of the thing itself, nor of some thing issuing out of another thing. If a man grant land, yielding for rent, money, corn, a horse, spurs, a rose, or any such like thing, this is a good reservation; but if the reservation be of the grass, or of the vesture

⁸² (1880) 30 U. C. C. P. 609.

⁸³ At p. 620.

⁹ Co. Litt. 47 a.

¹⁰ First ed. 80; 5th ed. 78.

of the land, or of a common or other profit to be taken out of the land, these reservations are void."

The words "saving and reserving" in the Crown grant are good words of exception.¹⁰

In *Proud v. Bates*,¹ Wood, V.-C., said:² "I do not think anything can be excepted out of a demise except that which is part of the property itself. It is not a right issuing out of the property which can be excepted. You either demise or not, the whole of the property. If you do demise the whole property and except anything, then it is by way of re-grant," etc.

A deed containing a reservation should be executed by the grantee.³

In *Fancy v. Scott*⁴ the reservation was of all mines, quarries and pits in the close, open or not opened. Bayley, J., remarked to counsel,⁵ "A landlord cannot *reserve* a component part of the land demised or granted, as he has done here. . . . This is, properly speaking, an exception, and not a reservation. It is in effect, an exception, and of a privilege which might properly be excepted," and in giving judgment said:⁶ "in *Wickham v. Hawker*,⁷ where by deed A. and B. conveyed to D. and his heirs certain lands *excepting and reserving* to A., B. and C., their heirs and assigns, liberty to come into and upon the lands, and their to hawk, hunt, fish, and fowl:—Held, that this was not in law a *reservation* properly so called, but a new grant by D. (who executed the deed) of the liberty therein mentioned; and, therefore, that it might enure in favour of C. and his heirs, although he was not a party to the deed. An exception must be to the person or persons who convey the legal title, and to him or them alone;⁸ and this being reserved to . . . who had no legal estate, but only an equity of redemption," it could not operate as an exception or reservation.⁹

In *Earl of Antrim v. Gray*, Chatterton, V.C., said:¹⁰ "It is plain that mines and minerals, being an integral part of the land, form properly the subject of exception and not of reservation. The

¹⁰ *Casselman v. Hersey*, (1872) 32 U. C. R. 340, per Wilson, J.

¹ (1865) 34 L. J. N. S. Ch. 406.

² At p. 411.

³ *Wickham v. Hawker*, (1840) 7 M. & W. 63, 76.

⁴ (1828) 2 M. & Ry. 335.

⁵ P. 337.

⁶ At p. 338.

⁷ (1840) 7 M. & W. 63.

⁸ *Cheetham v. Williamson*, (1804) 4 East, 469.

⁹ Per Pollock, C. B., for the Court in *Denison v. Holliday*, (1857) 1 H. & N. (N. S.) 647.

¹⁰ (1875) 9 Ir. Rep. Eq. 520.

¹ At p. 520.

right to enter and dig for them is the subject of a reservation, and a reservation is in law a re-grant to the grantor by the grantee. If, therefore, the words 'subject to the covenants, clauses, and agreements on the part of the grantees' were to receive the strictest construction, and to be confined to a contract or grant by them, this amounts to a grant by them, and implies a contract on their part. It is settled that words of exception may amount to a covenant by the grantee, as in *Duke of St. Albans v. Ellis*.² The deed is a contract between the grantor and grantee that the grantee is to have and enjoy all the benefits conveyed by the grantor, save and except the matters excepted, which the grantor and grantee agree shall not pass by words which would otherwise be operative to pass them. The case of *Lady Russell v. Gulwel*³ is an authority in support of this view."

The province of a special condition is to make known to the purchaser that he will not get that which, but for the condition, he would be entitled to. A purchaser must take subject to that which is peculiar to and necessarily incident to the estate. This may be illustrated thus: Where a contract is entered into to sell a freehold, and nothing is said about the minerals, if the purchaser finds that the minerals are reserved the title is bad, and he cannot be compelled to take it.⁴

In *Mawson v. Fletcher*⁵ there was a sale by auction upon certain conditions, one being that "if any objection or requisition be delivered or persisted in, the vendors shall be at liberty to rescind the contract on returning to the purchaser his deposit, without interest or expenses." On the investigation of the title it appeared that upon one of the deeds there were words purporting to reserve to the lord of the manor all mines and minerals whatsoever. The purchasers objected and the vendor gave notice of rescission.

Sir W. M. James, L.J., said:⁶ "That is as much a question of title as if it related to any portion of the surface, and is a question of title to a particularly valuable part of the property. . . . It is true that the vendors could not make such a contract, and avail themselves arbitrarily of this condition to put an end to it; but in this case it is impossible not to see that they would be involved in very considerable trouble and expense by such an inquiry as would be necessary"; and the purchaser was held not to be entitled to compensation.

² (1812) 16 East, 352.

³ 41 Eliz., 2. Cro. Eliz. 657.

⁴ *Hayford v. Criddle*, (1855) 22

Beav. 480, per Romilly, M.R.

⁵ (1870) L. R. 6 Ch. 93.

⁶ P. 94.

Where there was a conveyance in fee of a messuage, etc., with appurtenances, excepting all mines of coal thereunder, with liberty to enter and sink pits for getting all such coal, and to erect engines and make drains, etc., necessary for working the coal, except as to such lands as lie within a specified distance of the messuage, and except any homestead; it was held by the Court of King's Bench, that the vendor thereby reserved to himself the right to dig coals under the messuage, buildings and homestead within the distance specified, but was not entitled to sink pits, erect engines or make drains, within the specified distance of the messuage or buildings or within the homestead.⁴

In *Eardley v. Granville*,⁵ Jessel, M.R., says: ⁶ "Where a freeholder grants lands, excepting the mines, he intends, first of all, as a matter of construction, to except not merely minerals, but the portion of the subsoil containing the minerals; in other words, to retain a stratum of the property, and if he does that, of course the lessee or grantee has no title whatever to the portion of the stratum reserved."

It was held in a Scotch case that where the owner conveys lands to a singular successor or other person, reserving the "liberty of working the coal" in those lands, he must be taken to have reserved the estate of coal (unless there are clear words in the deed qualifying that right of property) with which he stands vested by grant at the date of the conveyance.⁷

The Earl of Selborne, L.C., said: ⁸ "You have words of reservation, and you have a prior title to the whole property in these coals and minerals in the person who is making this reservation in his own favour. What is reserved? If there be no limit of time . . . it is a perpetual reservation. What is the subject of the reservation? The right to take away the whole of these coals and minerals. A perpetual right to the whole possible profits and benefit of property is *prima facie* very much like the whole beneficial interest in that property, at least when you find that the man who had it before leaves, as a reservation, something out of his grant, and that this is the quantum of the reservation in point of matter and in point of time, the most sensible and reasonable construction, if there be no technical difficulty, is that he means to reserve, as to that subject, the

⁴ *Bowler v. Wolley*, (1812) 15 East. 444.

⁵ (1876) 3 Ch. D. 826.

⁶ P. 835.

⁷ *Hamilton v. Dunlop*, (1885) 10 A. C. 813.

⁸ *Ib.* p. 819.

property which he had before, with such superadded privileges as to the means of getting at it and enjoying it as are found in the deed."

The reservation in a deed (dated 1781) was "Saving and reserving nevertheless to the said (grantors) and to their heirs and assigns, full and free liberty by all necessary and convenient ways and means, to search for, get, dig, drain, and carry away, the coal, iron, stone, and other minerals, which may or shall be found within the several lands hereby granted and exchanged from them the said (grantors) to the said (grantee), his heirs and assigns, and also to drive any sough, level or gutter through the same lands to any other lands or grounds of them the said (grantors) or either of them, making satisfaction for all damages to be done or occasioned by the use or exercise of any of the privileges aforesaid, to have and to hold all and singular the said messuage or tenement, lands and premises (saving and except as aforesaid) unto the said (grantee), his heirs and assigns, to the only proper use and behoof of the said (grantee), his heirs and assigns for ever."

The plaintiff was the successor in title of the grantors, and the defendant H. of the grantee. Neither the plaintiff nor his predecessors in title had ever worked the mines under the above reservation, the existence of which had been forgotten.

In 1865 the immediate predecessor in title of the defendant granted a lease of part of the mines under the property to a lessee, whose interest became vested in defendants B. and B. In 1877 defendant H. granted to plaintiff a lease for 40 years of the mines under the rest of the property. In 1890 plaintiff brought this action against his lessor (H.) and B. B., asking for a declaration that he was entitled to the mines under the lands which his predecessors in title had conveyed by the exchange deed of 1783, etc.

Lindley, L.J., in giving judgment for the Court says:^o "In order to understand the effect of this deed, it is necessary to carry our minds back to 1783, and construe it as such instruments were construed at that date. We must not forget that in those days a grant did not pass lands, mines, or minerals, although it might confer a right to work them." . . .

"No conveyancer intending to except mines and minerals from a conveyance of lands would express his intention by reserving a liberty to get minerals. If, indeed, it were plain from recitals or other clauses in the deed that an exception was intended, possibly effect might be given to it." . . .

^o P. 483.

"That H. did not intend to except the minerals from the land which he conveyed, nor to reserve any right to get minerals under it is plain."¹⁰ ". . . What was reserved . . . was full and free liberty to work the mines under the lands conveyed by them. They reserved a *profit a prendre* (defined to be 'a right to take something off another person's land') an incorporeal hereditament, not a mere personal revocable license," not exclusive.

"An exclusive right to all the profit of a particular kind can, no doubt, be granted; but such a right cannot be inferred from language which is not clear and explicit." . . .

¹¹ ". . . There is not enough, in our opinion, to show that anything more was reserved than a right to work the mines when desired; such a right does not exclude the right of the owner to work them, provided he does not disturb the grantee in his working operations when and where he is carrying them on."²

In *Earl of Jersey v. Guardians, etc.*,³ Lord Esher, M.R., said: "The conveyance is of all the lands, tenements and hereditaments mentioned in the schedule, and if there were no reservation, that would carry all the minerals within the ambit; but then there is reserved 'all mines of coal, culm, iron and all other mines and minerals whatsoever, except stone quarries within or under the several lands.' . . . Now, I cannot help thinking that should be read 'all mines of coal, culm, iron and all other mines and all minerals whatsoever,' for I do not think the word 'other' can be applied to minerals."

Bowen, L.J., said: ⁴ "I also cannot help feeling that the exception upon the exception which is contained in the words 'except stone quarries' shows that stone quarries would have been reserved under minerals unless the exception had been there. The words 'all mines and minerals whatsoever' are as large as they can be, and I do not think that they can be cut down by the previous words 'coal, culm and iron.' It seems to me, although that is a question of construction, that they are intended to be words which exclude the operation of the rule of construction of *ejusdem generis*."

Fry, L.J.: ⁵ " . . . Where you find the word 'whatsoever' following, as it does, upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of *ejusdem generis*."

¹⁰ P. 484.

¹¹ P. 486.

² *Sutherland v. Heathcote*, (1892)

1 Ch. 483.

³ (1889) 22 Q. B. D. 558.

⁴ P. 563.

⁵ P. 566.

*Cardigan v. Armistead*⁹ decided that where mines are reserved everything is reserved as necessary for working them, of course including the way-leave for carrying away the minerals.¹⁰

This principle is illustrated by *Dand v. Kingscote*,¹ a case arising out of a deed dated 1630, by which the grantor conveyed land in A., "excepting and reserving out of the grant all mines of coal within the fields and territories of A., together with sufficient way-leave and stay-leave to and from said mines, with liberty of sinking and digging pit and pits."

Parke, B., says:² "First, as the coals in all the seams are excepted, and a right to dig pits for getting those coals reserved, all things that are 'depending on that right, and necessary for the obtaining it,' are reserved also, according to the rule of *Sheppard's Touchstone*, 100. Consequently, the coal owner had, as incident to the liberty to dig pits, the right to fix such machinery as would be necessary to drain the mines, and draw the coals from the pits. The case finds that the steam-engine which was erected was *necessary* for the winning and working the lower seams, which are the principal seams in that coal-field; and, therefore, the defendant had a right to erect it.

The pond for the supply of the engine, and the engine-house seem to have been necessary accessories to such an engine, and were therefore lawfully made."

It was also held that the mineral owner was not confined to such description of way as was in use at the time of the grant.³

In *Seaman v. Vawdrey*,⁴ a deed, dated in 1704, contained an express and unequivocal reservation to the grantor therein, and her heirs of all mines and veins of salt, and the question was whether those in 1809 representing the grantor had lost their property or their right to enter upon the enjoyment of it, there having also been reserved free ingress, etc., to take and carry away and do all things necessary.

Sir Wm. Grant, M.R., says:⁵ "Not by any actual grant or release, for none is alleged; but it is said, at this distance of time, a release is to be presumed. I do not clearly see any circumstances from which that presumption is to arise. No adverse possession is

⁹ (1823) 2 B. & C. 197.

¹⁰ See also *Rogers v. Taylor*,

¹⁰ *Per Wood, V. C.*, (1865) 34 L. J. Ch. N. S. 411.

(1857) 1 H. & N. 714.

¹ (1840) 6 M. & W. 174.

⁴ (1809) 16 Ves. 390.

² P. 196.

⁵ At p. 392.

alleged. The owner of the soil has had the enjoyment to which he was entitled by the contract, and which is perfectly consistent with the right of the owner of the mines. If it could be shown that he had wrought any mines himself, or had interrupted the other parties claiming as representing C. (the grantor) under the reservation of the mines, in working them, that would lay a ground upon which the presumption could stand; but nothing is alleged, except the mere absence of any evidence of the exercise of this reserved right."

In *Durham & S. R. Co. v. Walker*,⁶ Tindal, C.J. (in delivering the judgment of the Court), said:⁷ " . . . the only right reserved to the dean and chapter, under the clause in question, is that of making, and granting the right of making, ways over the demised lands for the purpose of getting the excepted mines and minerals. The exception is of all . . . mines, minerals and seams of clay within and under the same, with full power to . . . dig, win and carry away the mines, quarries and seams of clay, with free ingress, egress and regress, way-leave and passage to and from the same. If the words of the exception had stopped here it would have been quite clear that the right of way intended was only a right of way for the purpose of getting the . . . minerals excepted. It would, in truth, have been like the words immediately preceding, viz., with power to dig, win and carry away nothing more than what the law would, if necessary, have given as incident to the exception, a right of passing to and fro for the purpose of making the exception available.⁸ But the language of the exception goes on further, viz., 'or to or from any other mines, quarries, seams of clay, lands and grounds, . . . and also all necessary and convenient ways, privileges and powers whatsoever 'for the purposes aforesaid,' and particularly of laying, making and granting waggon-ways in and over the said premises, or any part thereof,' etc. These are the words which create the doubt. Are they introduced for the purpose of securing to the dean and chapter a general right of way and of granting way-leaves over the demised lands for purposes other than that of getting the matters excepted, or are they confined to that object alone? We have already stated that we think they are confined to the latter object. The things excepted are the . . . minerals; and we consider all which follows as mere accessories to the exception. The word 'with' must be taken to mean, 'and as incident thereto.' . . .

⁶ (1842) 2 Q. B. 965.

⁸ *Sheppard's Touch*. 100.

⁷ P. 965.

"Neither the way-leave to and from the mines in and under the lands demised, nor the way-leave to and from other lands and grounds, purports to be excepted or reserved as a distinct matter of exception or reservation. Both the one and the other are mentioned in connection with the mines excepted, and in no other manner whatever. The right of way to other lands and grounds is connected with the right of way to the mines, etc., reserved, only by the disjunctive 'or,' excepting mines, etc., with a right of way to and from them 'or' to and from any other lands and grounds. If the intention had been to reserve to the dean and chapter a right of way, and still more a right of granting way-leaves, independently of the right to get the excepted . . . mines, such a right would surely have been treated as a separate matter, unconnected with the previous exception, more particularly being, as it was stated to us in the argument to be, a right of the greatest value and importance. There is nothing unreasonable in supposing that the lessors meant to reserve to themselves a right of getting the excepted mines and minerals by means either of shafts and pits to be sunk on the demised premises, or, if it should be more convenient, by means of shafts or pits already sunk or to be sunk on adjoining lands; and, if such was the intention, the language of the deed is perfectly well adapted to carry it into effect."

⁹ "It is to be observed that a right of way cannot, in strictness, be made the subject either of exception or reservation. It is neither parcel of the thing granted, nor is it issuing out of the thing granted, the former being an essential to an exception, and the latter to a reservation. A right of way reserved (using that word in a somewhat popular sense) to a lessor, as in the present case, is, in strictness of law, an easement newly created by way of grant from the grantee or lessee."

"Where a man having a close surrounded with his own land, grants the close to another in fee, for life, or years, the grantee shall have a way to the close over the grantee's land as incident to the grant (i.e., without express words), for without it he cannot derive any benefit from the grant. So it is where he grants the land and reserves the close to himself."¹⁰

The grantor has the right to choose the line of the way,¹ but only so as to enable him to enjoy it in the condition in which it was at the time of the grant.²

⁹ P. 967.

¹⁰ *Corporation of London v. Riggs*, (1880) 13 Ch. D. 798.

¹ *Wms. Saunders*, 323; *Pinnington v. Galland*, (1853) 9 Exch. 1.

² *Bolton v. Bolton*, (1879) 11 Ch. D. 989.

The rule about rights of way which arise from implication is that on a severance of two properties, anything like a right of way, or any other easement which is used, and which is reasonably necessary for the reasonable and comfortable use of the part granted, is intended to be granted too. The principle is that the grantor is assumed to have intended that his grant shall be effectual. When two properties are severed, the parties to the severance, both the man who gives and the man who takes, intend that such reasonable incidents shall go with the thing granted as to enable the person who takes it to enjoy it in a proper and substantial way.³

There is a great difference between an implied grant and an implied reservation. . . . When a man grants a thing he must be considered as granting that which is necessary in the proper sense of the word for the enjoyment of that which he grants, and he cannot derogate from his own grant; he cannot do that which will destroy or render less effectual that which he has granted. But as regards reservation, the matter stands on principle, . . . in a very different position. To say that a grantor reserves to himself in entirety—that which may be beneficial to him, but which may be most injurious to his grantee—is quite contrary to the principle on which an implied grant depends. That principle is that a grantor shall not derogate from or render less effectual his grant, or render that which he has granted less beneficial to his grantee. To this there are at any rate two exceptions. Where the easement of which the reservation is claimed is a mutual easement required for the grantor, and where there is existing at the time that which is said to be a continuous easement, and of necessity—not an easement strictly, but that which is in the nature of an easement—as a way of necessity, of that there is or may be an implied reservation.⁴

Where there are several grants, not absolutely at the same moment, but so far at the same moment that they are to be considered as one transaction, and done at the same time; then each of the grantees gets the benefit of an implied grant of easement. This is not a reservation.⁵

When the owner of land granted it to the grantee, his heirs and assigns, excepting and reserving to himself his heirs and assigns, "all and all manner of coal, seams and veins of coal, iron ore, and all other mines, minerals and metals which then were, or at any time, and from

³ Per Bowen, L.J., in *Bayley v. G. W. R. Co.*, (1884) 26 Ch. D. 439, C. A., at p. 452.

⁴ Per Cotton, L. J., in *Russell v. Watts*, (1883) 25 Ch. D. 573, C. A.

⁵ *Ib.*

time to time thereafter, should be discovered in or upon the said premises, etc., with free liberty of ingress, egress and regress, to come into and upon the premises to dig, delve, search for, and get, etc., the said mines and every part thereof, and to sell and dispose of, take, and convey away the same, at their free will and pleasure, and also to sink shafts, etc., for the raising up works, carrying away and disposing of the same or any part thereof, making a fair compensation to (the grantee) for the damage to be done to the surface of the premises, and the pasture and crops growing thereon." It was held under this reservation the grantor was not entitled to take all the mines, but only so much as he could get, leaving a reasonable support to the surface.⁶

The facts in *Hext v. Gill*⁷ were that in 1799 the Duke of Cornwall, as lord of a manor, granted the freehold in a copyhold tenement to the copyholder, reserving "all mines and minerals within and under the premises with full and free liberty of ingress, egress and regress, to dig and search for, and to take, use, and work the said excepted mines and minerals," the deed not containing any provision for compensation. Under the tenement was a bed of china clay, the existence of which did not appear to have been contemplated by either party at the time, no china clay having ever been gotten out of the lands of the duchy, though the existence of tin was well known. It was admitted in the cause that china clay could not be gotten without totally destroying the surface, and the progress of getting tin by "streaming," which was an ancient, and at the time of the grant the most usual, mode of getting tin, was almost equally destructive. A bill by the owner of the surface to restrain the owner of the minerals from getting china clay having been dismissed by Wickens, V.C., on the ground that the reservation included china clay, with the power to get it, it was held, on appeal, that china clay was included in the reservations, that the surface owner was entitled to an injunction to restrain the owner of the minerals from getting it in such a way as to destroy or seriously injure the surface, and that when a land owner sells the surface, reserving to himself the minerals with power to get them, he must, if he intends to have the power to get them in a way which will destroy the surface, frame the reservation in such a way as to show clearly that he intended to have the power.

⁶ *Harris v. Ryding*, (1839) 5 M. & W. 60.

⁷ (1872) L. R. 7 Chy. 699.

Sir G. Mellish, L.J.* "The cases show that where the ownership of minerals is separate from the ownership of the surface, *prima facie* the owner of the surface is entitled to have his surface supported by the minerals. That is not confined, as contended by the Solicitor-General to the case where the Court has not before it the instrument under which the owner of the minerals derives his rights, but it also applies to cases where the Court has the instrument before it, for the purpose of construing the instrument, to this extent, that *prima facie* the right to support exists, and the burden lies on the owner of the minerals to show that the instrument gives him authority to destroy what is described by the Judges as the inherent right of a person who owns the surface apart from the minerals. The question is, whether the words of the reservation in the present case mean that the ownership of the surface is altogether to be subject to the ownership of the minerals, so that the owner of the minerals may do whatever is necessary for the purpose of enabling him to get them, although it may of necessity utterly destroy the surface. . . . In my opinion, the short and ambiguous words of this reservation, according to their fair construction, only give a right to create what I may call temporary damage, and do not authorize the owner of the minerals absolutely to destroy or to cause a serious continuous and permanent injury to the surface."

Sir W. M. James, L.J.:⁹ "The long and uniform series of authorities appear to me to have established a very convenient and consistent system, giving the mineral owner every reasonable profit out of the mineral treasures, and at the same time saving the land owners practical enjoyment of his houses, gardens, fields, and woods, without which the grant to him would have been illusory."

So in *Bell v. Wilson*,¹⁰ a reservation to the grantor of all "mines or seams of coal, etc., with liberty to dig, etc.," included free stone, but that the grantor had only the right to get the free stone by underground mining, and not by open quarrying.

The *Earl of Jersey v. Guardians of the Poor of the Neath Poor Law Union*.¹ Where a conveyance in fee of land reserved "all mines of coal, culm, iron, and all other mines and minerals whatsoever, except stone quarries," with power to work the same, and to make roads, etc., it was held, applying the rule of construction laid down in *Hext v. Gill*,² that, there being nothing in the context to show

* 713.

* 719.

¹⁰ (1866) L. R. 1 Ch. 303.

¹ (1889) 22 Q. B. D. 555.

² (1872) L. R. 7 Chy. 699.

that the reservation should have a more limited meaning, it included brick earth and clay, which were substances which could be got from underneath the surface of the earth for the purpose of profit, and that the plaintiff, therefore, was owner of the brick earth and clay, and was entitled to compensation.

Construction. Grants by the Crown are construed favourably to the grantor, and in such a case, the usual rule as to the construction of grants is inverted. If it be shown that the Crown is deceived regarding a grant, it will not include a subject-matter not expressed.⁷

It is a Rule of Construction that where there is a grant and an exception out of it, the words of the exception are to be considered as the words of the grantor, and to be construed in favour of the grantee.⁷¹

It would seem to follow that the powers and privileges which would be implied in the case of the reservation or exception of the minerals in a grant of the land are not so extensive as those which would be implied in the case of a grant of the minerals by the owner of the land.

This is based on the maxim that a grant is to be construed most strongly against the grantor, but in *Taylor v. Corporation of St. Helens*,⁸ Jessel, M.R., says: "I do not see how, according to the now established rules of construction, as settled by the House of Lords in the well known case of *Grey v. Pearson*,⁹ followed by *Roddy v. Fitzgerald*¹⁰ and *Abbott v. Middleton*,¹ that maxim can have any force at the present day."

In *Mundy v. Duke of Rutland*² it was held by the Court of Appeal that if a lessor wished to reserve rights in derogation of his grant, he must do so in plain terms, and the plaintiff, who was the lessee of an upper strata by a lease which reserved to the owner and his lessees the right of working any coal not included in that demise, and the same powers and privileges with respect to such last mentioned coal as if that demise had not been made, succeeded in enjoining the lessor and a company, who were lessees of lower strata, which they intended working upon proving that the works threatened by the defendant would, in all probability, affect the security of his mine.

⁷ *A. G. v. Ewelme*, (1853) 17 Beav. 366; *Bulmer v. The Queen*, (1894) 23 S. C. R. 488.

⁷¹ *Bullen v. Denning*, 1826, 5 B. & C. 850.

⁸ (1870) 6 Ch. Div. 270.

⁹ (1857) 6 H. L. C. 61.

¹⁰ (1857) 6 H. L. C. 823.

¹ (1858) 7 H. L. C. 68.

² (1882) 23 Ch. D. 81.

The rule of law is that a reservation is to be construed strictly still, however, it would reserve to the grantor all that was not conveyed by the grant, provided the meaning and intention of the parties be clear.³

It has been decided that a proviso in a grant of land that the grantee should not dig or get any coal upon the lands for sale, but only such as should be burned or employed thereon, operated as a covenant, and was not a repugnant condition.³¹

Covenants For Title. In case the contract has been executed but no title has passed, then, on a covenant for seisin or good right to convey, the party is entitled to recover back his principal and interest and expenses; but, in case some estate has passed by the deed, but not the whole estate contracted for, then he is entitled to recover the difference in money between the value of that estate, which has passed, and that which the deed purported to convey, and which the grantor covenanted he had the right to convey.⁴

Where lands were granted in Ontario under the Short Forms Act with covenants for title, with the right and easement of erecting a dam at a certain spot and the grantors had not power to make such a grant, it was held that they were not liable to repay the full purchase money less the actual value of the land without the supposed right, but only the actual practical value of the supposed right.⁵

"The Courts in this Province (Ontario) have invariably, I think, held that the covenant for title is a continuing one running with the land to its owner for the time being, and may be sued upon accordingly, from time to time as fresh damage arises."⁶

Dower at Common Law may be defined to be an estate for life to which a wife is entitled, after the decease of her husband, in the third part of every estate of inheritance of which her husband was

³ *Harris v. Ryding*, (1839) 5 M. & W. 70, per Parke, B.

³¹ *Ashton v. Stock*, (1877) 6 Ch. D. 719.

⁴ *Empire Gold Mining Co. v. Jones*, (1869) 19 U. C. C. P. 245, per Gwynne, J., at p. 257; but see and compare *Platt v. G. T. R.*, (1892) 19 A. R. 403.

⁵ *Platt v. G. T. R.*, (1892) 19 A. R. 403.

⁶ Per Meredith, J., in *Platt v. G. T. R.*, (1892) 19 A. R. 403, at p. 414, citing *Gamble v. Rees*, (1850) 6 U. C. R. 396; *Scott v. Fralick*, (1850) 6 U. C. R. 511; *Rowe v. Street*, (1859) 8 C. P. 217; *Scriver v. Myers*, (1859) 9 C. P. 255; *Keyes v. O'Brien*, (1860) 20 U. C. R. 12; *Meredith v. McCutcheon*, (1863) 13 C. P. 209; *Brown v. O'Dwyer*, (1874) 35 U. C. R. 354; *Platt v. G. T. R.* (1886) 11 O. R. 246.

solely seised, either in deed or in law, at any time during the coverture, to have and to hold to her, in severalty by metes and bounds, for the term of her natural life, whether she has had issue by her husband or not, and provided she be past the age of nine years at the time of her husband's death.⁴

The leading case on the subject of dower in mining lands is *Stoughton v. Leigh*,² a case directed out of the High Court of Chancery for the information of the Court of Common Pleas. The facts were in substance as follows: John Hanbury was in his lifetime, and during his marriage, and at his death, actually seized of divers landed estates and of several mines and strata of lead and coal, namely: In his own land, a lead mine and a coal mine, neither opened, wrought or demised; two lead mines and two coal mines, which during coverture he had demised to tenants for years, reserving pecuniary rents to be paid whether they did or did not open and work them; and of each sort of these one had been opened before his death by the tenant who still continued now to work it, and the other had not been opened; a lead mine and a coal mine which he had demised during the coverture to tenants for years rendering not pecuniary rents, but quantities of the lead ore and coal when gotten, and the tenants were by the terms of their lease at liberty to work or not to work these mines; the coal mine was at the time of John Hanbury's death, and of this suit, wrought by the tenants; the lead mine had not been opened; and two lead mines and two coal mines which had been opened and wrought by the deceased himself at the time of his death, one of each sort of which mines had, from the time of his death, ceased to be wrought, his heir thinking them unprofitable; the other of each sort the heir continued to work to profit.

The first question was whether John Hanbury's widow was entitled to dower in any of the cases mentioned in the first question, and what the widow could claim to be legally assigned to her thereout as her dower. The deceased was also entitled to the following minerals lying under land, which were not his own, but wherein he had purchased of the land owner liberties to work through his land, namely, a mine or stratum of coal and another of lead ore which he had opened and wrought during coverture, and was working at the time of his death, and since which the heir had ceased to work the lead, but continued to work the coal, a mine or stratum of lead, and another of coal which he had not opened or wrought, a mine or stratum of lead and another of coal which he had demised to tenants for years rendering

⁴ Litt. c. 19, vol. 1, p. 569, *et seq.*

² (1808) 1 Taunt. 402.

at their own option, which they might annually make, either pecuniary rents or rents in kind, commencing from the time when the mines should be wrought. The lead mine had been opened before the death of John Hanbury, and the tenants had paid their rents in ore in kind. The coal mine had not been opened nor was yet opened.

In case the Court should be of opinion that the widow was entitled to dower in any of the cases mentioned in the first question, the next question for the opinion of the Court was whether she was entitled to dower of all or any, and which of the mines and strata or rents secondly above mentioned, and what she could legally claim to be assigned to her as her dower thereof.

Lastly, soon after John Hanbury's death the heir let the widow into possession of and assigned to her for her dower the estate called "A," certain closes of land in which there was an open coal mine wrought at a certain period during the coverture, but which had ceased to be wrought long before the husband's death, and the value of the closes was amply sufficient to answer any demand of dower without regard to the value of the coal.

The widow had since her husband's death begun to work this mine and had retained the profit to her own exclusive use.

The third and further questions for the opinion of the Court were, whether the widow was in law entitled in virtue of her interest of dower or for any other reason to work this mine for her own exclusive use and benefit.

Taking the assignment of these closes as the widow's dower to be the act of the heir himself, and to have been a most excessive assignment in point of value, had the heir at law any, and what remedy, against the doweress as against the effect of his own act?

If this assignment had not been his own act but had been made in the course of legal proceedings under a writ of dower, would the heir by law have any and what remedy against the effect of such assignment?³

Lord Mansfield, C.J.:⁴ "The grant of the stratum must be taken to be a grant in fee simple. In the course of the discussion I was strongly struck with the argument used for the heir that Lord Coke

³ Cases cited on behalf of the doweress; 2 F. N. B. 148; *Rex v. Miller*, (1777) Cowp. 619; *Buckridge v. Ingram*, 2 Ves. Jr., (1795) Ves. 652; Lord Coke, 1 Inst. 32 a; *Clavering v. Clavering*, (1726) 2 P. Wms. 388; *Hoby v. Hoboy*, (1683) 1

Vern. 218; Co. Litt. 54 b; *Saunders' Case*; *Dowman's Case*, 5 Co., 12; 2 Inst. 368. Cases contra: *Kent v. Kerry*, 1 Str. 625; *Whitfield v. Bewit*, (1724) 2 P. Wms. 242; 2 Inst. 367, s.

⁴ 409.

has in 1 Inst., 32, enumerated all the species of inheritance of which a woman shall be endowed; and I thought it extraordinary that no mention should be made of mines. But, upon referring to the passage it appears to be no enumeration of all the things whereof a woman shall be endowed. Nothing like it; in the 36th section, upon which this passage is a commentary, Littleton says the wife shall be endowed of all lands and tenements of which her husband was seized. Lord Coke says not a word to explain what is land or what is a tenement, thinking the import of those terms well known in the law. But the intention of the passage is to show that though all lands and tenements are subject to dower, and assignment is to be made by metes and bounds where it can, yet it is no impediment to the dower that the tenements are of such a nature as that they cannot be assigned by metes and bounds; but in those cases it shall be assigned as well as it can be, as by the third toll dish of a mill, or the like. In the preceding chapter, which is of tenant by the curtesy, Littleton does not mention of what the wife must be seized, and Lord Coke 29b speaks of lands only, but Littleton, sec. 52, speaks of tenements. The words in both these cases must receive the same exposition; and it is only necessary to see whether this species of property be land or a tenement. Comyn and the other digests which have been cited, only follow the words of Coke's Littleton, and the reason of whole authority is above stated. In the case of trees there is a profit in the shade and pannage, but in the case of a mine, the working it is the only mode in which it can be enjoyed. The Court certified to the High Court of Chancery that their opinion upon the questions proposed to them, arising from the first and second statements in the case, was that the widow of John Hanbury was dowable of all his mines of lead and coal as well those which were in his own landed estates as the mines and strata of lead or lead ore and coal in the lands of other persons which had in fact been open and wrought before his death, and wherein he had an estate of inheritance during the coverture; and that her right to be endowed of them had no dependence upon the subsequent continuance or discontinuance of working of them, either by the husband in his lifetime or by those claiming under him since his death.

"They thought, too, that her right of dower of such mines, etc., could not be in any respect affected by leases made by the husband during the coverture; but if any of the existing leases for years were made by the husband before marriage, then the endowment (if made of the mines) must be of the reversions and of the rents reserved by such leases as incident to the reversion; in which case they thought

the widow would be bound so long as the demises continued, to take her share of the renders, whether pecuniary or otherwise, according to the terms of the respective reservations. They were also of opinion that the widow was not dowable of any of the mines or strata which had not been opened at all, whether in lease or not.

In assigning the dower of Mr. Hanbury's own lands the sheriff must estimate the annual value of the open mines therein as part of the value of the estates of which the widow is dowable; but it was not absolutely necessary that he should assign to her any of the open mines themselves or any portions of them. The third part in value which he should assign to her, might consist wholly of the land set out by metes and bounds, and containing none of the open mines. Or he might include any of the mines themselves in the assignment to the widow, describing them specifically, if the particular lands in which they lie should not also be assigned; but if those lands should be included in the assignment of open mines, then, they might, but were not necessarily, to be so described, being part of the land itself which was assigned; and as the working of open mines was not waste, the tenant in dower might work such mines for her own exclusive profit. The sheriff might divide the enjoyment and perception of the profits of any of the particular mines as after mentioned.

In regard to the mines and strata which Mr. Hanbury had in the lands of other persons, they were of opinion that it was not necessary that the sheriff should divide each of the mines or strata; but he might assign such a number of them as might amount to one-third in value of the whole, or he might proportion the enjoyment of such of them as he should think necessary, so as to give each a proper share of the whole. If the division of an open mine could be made by metes and bounds, as lands are required to be divided, without preventing the parties from having the proper enjoyment and perception of the profits, they thought that mode should be adopted; but as the property seemed to them to be unquestionably of a beneficial severance, in that way they thought the case analogous to some of those stated by Lord Coke, 1 Inst., 32a; wherein it was held that the sheriff may make the assignment in a special manner; and that, therefore, he might so proceed with respect to the mines in question. They found no authority, however, establishing any precise mode of dividing a mine, nor could they point out any that might not be attended with inconvenience; but if the sheriff was to make the assignment, they thought he might lawfully execute his duty by directing separate alternate enjoyment of the whole for short periods, propor-

tionate to the share each had in the subject, or by giving the widow a proportion of the profits.

In answer to the last question proposed to them, they were of opinion that the widow was entitled to work for her own exclusive use the open mine within the close that had been assigned to her, without any exception of the mine, for her dower of one of the estates, notwithstanding the excess arising from the omission of such exception; and, inasmuch, as the assignment was the act of the heir himself, being of full age at the time, they thought he had no remedy at law against the doweress for avoiding the consequences of that act. Had he been under age at the time, he might have had relief by writ of admeasurement of dower; or had the assignment been made by the sheriff in execution of a judgment in dower, the heir might have had the *scire facias* to obtain an assignment *de novo*.

This decision is referred to by North, J., in *Re Kemeys-Tynte*, *Kemeys-Tynte v. Kemeys-Tynte*,⁵ as a binding authority.

In *Hoby v. Hoby*,⁶ the bill was to be relieved against an assignment of dower by the sheriff, which in the bill was charged to be fraudulently done; there being assigned to the defendant for her dower one full third part of the lands, which amounted to £300 per annum, and in this third part there was a coal work which one year with another was worth £300 per annum beyond all charges; and yet no consideration was had of it in the assignment of this dower; and it likewise appeared that the defendant's own father was the only person that on behalf of the infants, the children, defended the right of the dower, and appeared to see the same set out, which looked like a collusion; and the plaintiff's counsel offering that the defendant should have one entire third, both of land and coal, works and by way of a rent-charge on the whole, the Court ordered that she should accept thereof; or that otherwise a new assignment of dower should be made.

The want of a formal assignment is not regarded in equity, it is the right in conscience on which the Court will act, in respect of dower.⁷ And the Court will assign dower, and order title deeds to be delivered for the proof of seisin,⁸ where dower was decreed to be allotted to be set out by the Master and the dowress to be let into

⁵ (1892) 2 Ch. 216.

⁶ (1683) 1 Vern. 218.

⁷ *Hamilton v. Mohun*, (1710) 1 P. Wms. 118.

⁸ *Moore v. Black*, (1735) Forr. 126; *Meggott v. Meggott*, (1742) Dick. 794; *Goodenough v. Goodenough*, (31 January, 1772), Dick. 795.

possession. But the title must be admitted or established, and then the Court will assign dower.¹⁰

In *Dickin v. Hamer*⁶ the Vice-Chancellor (Kindersley) said:⁷ "It appears that this land has mines under the whole of it. Now, supposing that after the intestate's death the widow's dower had been actually set out by metes and bounds, I apprehend she would be tenant for life of that portion, with remainder to the heir; at all events the heir would be owner in fee, subject to the dowress' life interest. What, then, would, in that case, be the rights of the dowress and the heir respectively with respect to mines under the portion so set out by metes and bounds? Of course, I mean unopened mines, because, as to those opened in the lifetime of the husband, I apprehend, there would be no question. Could the dowress open mines on that portion? Though there is not any precise authority on that point, it appears to me that the dowress is in the position of a tenant for life of that portion of the land. Now, a tenant for life of land cannot himself open mines, but, on the other hand, the tenant for life has a right to say that the remainderman shall not open mines. And I do not see why the dowress would not be in the same position. If the heir, obtaining the consent of the dowress for the purpose, were to open mines upon the portion set out by metes and bounds, or to grant a lease of them, the dowress could not afterwards insist that she was entitled to a third of the profits of the mines, or a third of the rents reserved by the heir in the lease."

⁸ "In any case, I am of opinion that the utmost the dowress could have claimed would have been one-third of the income of the proceeds arising from the royalties, and not one-third of the corpus."

In *Spence v. Scurr*.⁹ it was held by Sir John Romilly, M.R., that sinking a shaft in a mine already open in order to work a new vein in the same mine is not opening a new mine; and when, under a lease granted by a testator, and afterwards agreed to be renewed by the trustees of his will, the lessees, after his death, sunk a new shaft for the purpose of working a new vein or seam lying below those already worked by them under such lease. The Court held that the latter was not a new mine, but the tenant for life under the will was entitled to all the rents payable in respect of the minerals so leased and worked.

¹⁰ *Mundy v. Mundy*, (1793) 4 Bro. Ch. Rep. 294; (1793) 2 Ves. Jr. 222, S. C.; *Curtis v. Curtis*, (1789) 2 Bro. Ch. Rep. 620.

⁶ (1860) 1 Dr. & Sm. 284.

⁷ At p. 295.

⁸ P. 298.

⁹ (1862) 10 W. R. 878.

In *McLean v. Laidlaw*⁵ it was held that where the nominee of lands of the Crown, before letters patent issued for the lands, sold and conveyed them away, being at that time unmarried, and afterwards having obtained the letters patent made a new conveyance to the same party, being then married, his wife could not, after his death, claim dower in the land, as she, being privy in estate and claiming her dower through her husband, was estopped by his deed made before the letters patent issued.

Dower is not extinguished by a conveyance to the Crown.⁶

The widow of a purchaser is entitled to dower and six years' arrears,⁷ but not where purchaser had agreed to convey upon conditions fully performed.⁸

In Ontario the common law right to dower has been extended by statute⁹ to include equitable estates, and also where the husband had a right of entry or action in any land. Dower *ad ostium ecclesiae* and *ex assensu patris* were abolished by statute.¹⁰

"The Dower Act,"¹ provides, in part, as follows :

"Dower shall not be recoverable out of any separate and distinct lot, tract or parcel of land, which, at the time of the alienation by the husband or at the time of his death, if he died seised thereof, was in a state of nature, and unimproved by clearing, fencing or otherwise for the purposes of cultivation or occupation."

As to dower in land in Ontario other than that specified in section 4 a distinction exists as to lands acquired by a man prior to the 31st day of December, 1897, and, in a particular instance, after that date.

⁵ (1846) 2 U. C. R. 222.

⁶ *Bigley v. Gibson*, (1860) 19 U. C. R. 458.

⁷ *Craig v. Templeton*, (1860) 8 Gr. 453.

⁸ *Burns v. Burns*, (1874) 21 Gr. 7; as to election, where provision in bar of dower, see *Strahan v. Sutton*, (1796) 3 Ves. 249; *Pickering v. Lord Stamford*, (1797) 3 Ves. 337; *Greatorex v. Carey*, (1802) 6 Ves. 615; *Birmingham v. Kirwan*, (1805) 2 Sch. & L. 444; *Miall v. Brain*, (1819) 4 Madd. 119; and cases there cited.

As to costs, where apportionment

of dower by consent and a case of a writ of dower on an assignment of dower, see *Lucas v. Culcraft*, (1782) 1 Bro. Ch. Rep. 134; and as to the operation of the Statute of Limitations in the case of dower, see *Oliver v. Richardson*, (1803) 9 Ves. 222, where an account of arrears of dower for twelve years past, the time of the title accruing, was decreed.

"The Dower Act," R. S. O. (1897) c. 164.

¹⁰ R. S. O. (1897) c. 164, s. 6.

¹ S. 4.

As to land in Ontario granted by the Crown as mining land and conveyed to the husband on or after the 31st day of December, 1897, "The Dower Act"⁸ provides⁹ that no dower shall be recoverable in case "the husband does not die entitled thereto." The section¹⁰ reads as follows:

"No dower shall be recoverable out of any land which has been heretofore,¹ or shall be hereafter, granted by the Crown as mining land in case such land is, on or after the 31st day of December, 1897, conveyed to the husband of the person claiming dower, and the husband does not die entitled thereto."

Dealing with the question of dower in lands other than those specified in "The Dower Act," section 4 (*supra*), (1) acquired prior to 31st December, 1897; (2) acquired since the 31st day of December, 1897, which were not "granted by the Crown as mining lands," and (3) lands "granted by the Crown as mining lands," and "conveyed to" the husband after 31st December, 1897, and of which he dies entitled thereto, it appears to be settled that dower may exist in these three cases in mines or quarries if open during the lifetime of the husband.

In Ontario, under "The Land Titles Act,"² where it is claimed that registered land is free from dower on account of the land being held in trust, or for some reason other than the wife's release of her dower by an instrument which can be produced and registered, and evidence to this effect, which appears satisfactory, is produced before the Master, he may issue a notice requiring the wife, who might otherwise seem entitled to dower, to support her right if she claims to be entitled to dower in the land; and in case she fails to do so, and to displace the *prima facie* case made, the Master may enter in the register a memorandum that the land is free from dower, and such entry shall, unless reversed on appeal, be a bar to any claim by such wife; and no appeal shall lie, unless the wife files a claim before the Master."³

"This section shall also apply to the widow of a former owner."⁴

Where registered land is transferred subject to a charge, or in case the registered owner of land, which is subject to a charge, subsequently marries the wife of such transferee or owner, shall have

⁸ *Supra*.

⁹ S. 5.

¹⁰ 5.

¹ 13th April, 1897, date of assent

to 60 Vict. (O.) c. 15, s. 6, by which the section was enacted.

² R. S. O. (1897) c. 138.

³ S. 49 (1).

⁴ S. 49 (2).

the same rights in respect of dower as she would have had if the legal estate had been transferred by an ordinary mortgage, and no others.³

In Nova Scotia. The effect of a wife's uniting in a conveyance with her husband is not to vest any estate in the grantee, separate and distinct from that of her husband, but rather to relinquish an inchoate right in the nature of an incumbrance.⁹

In New Brunswick, where a husband shall die beneficially entitled to any lands for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable,¹⁰ or partly legal and partly equitable, shall be an estate of inheritance in possession (other than an estate in joint tenancy), the widow shall be entitled in equity to dower¹ out of the same land.²

Where a husband shall have been entitled to a right of entry or action in any land, and his widow would have been entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof, if such dower be sued for or obtained within the period during which such right of entry or action might be enforced.³

A widow cannot maintain an action at law for dower in land in which her husband had only an equity of redemption during the coverture; even though the husband's right has been sold since his death, and purchased by defendant, expressly subject to the right of dower; or though the mortgage may have been paid, if it is not discharged on the records.⁴

If the husband was seized as tenant in common, the widow can only be endowed in common under the Act 21 Vict. c. 25, and not by metes and bounds.⁵ A widow has not, previous to her dower being assigned, an estate of freehold in the lands of her deceased husband.⁶

³ S. 50.

⁴ Per Henry, J., in *Redden v. Turner*, (1896) 29 N. S. R. 44; adopting the statement in *Schouler's Husband and Wife*, s. 451; see also *Collins v. Story*, (1851) James 141.

¹⁰ *Leetch v. Sears*, (1889) 30 N. B. R. 257.

¹ *Sweeny v. Godard*, (1859) 9 N. B. R. 300; 4 All. 300.

² *C. S. N. B.* (1877) c. 73, s. 1.

³ *Ib.* s. 2.

⁴ *McDonald v. Estabrooks*, (1860) 9 N. B. R. 455; 4 All. 455.

⁵ *Doe dem. Johnston v. Jardine*, (1873) 14 N. B. R. 338; 1 Pug. 338.

⁶ *Torrens v. Currie*, (1882) 22 N. B. R. 342.

In Quebec. Articles 1426 to 1471 of the Civil Code of Lower Canada deal with dower.

In British Columbia. "The Dower Act"⁷ contains the first thirteen sections of the Imperial Act 3 & 4 Wm. IV. c. 105, for the amendment of the Law relating to Dower. Section 5 enacts that "no widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will."

In the North-West Territories, by "The Territories Real Property Act,"⁸ which applies to all lands in the North-West Territories, the district of Keewatin, and all other territories of Canada, it is enacted that no widow whose husband dies on or after the first day of January, 1887, shall be entitled to dower in the real property of her husband; but she shall have the same right in such real property as if it were personal property.

Vendor's Lien. The *prima facie* right of an unpaid vendor of land to an equitable lien upon it for the amount of his unpaid purchase money is too well established to be disputed. The right arises whenever there is a valid contract of sale, and the time for completing that contract has arrived and the purchase money is not duly paid. There is no necessity for the vendor to stipulate for the lien; and although the lien arises from, and may in one sense be said to be created by the contract of sale, still no contract to confer the lien is necessary, and in that sense the lien may be said to arise independently of contract.⁹

If the seller agrees that the purchase money shall be paid to a third person, and the purchaser accordingly gives a note to that person for the amount, the lien on the estate will, it seems, go with the note.¹⁰

The vendor's lien is assignable even by parol.¹¹

"It was contended that to give the plaintiff the benefit of the vendor's lien for purchase money unpaid, would be contrary to the Statute of Frauds, as he could only claim by parol assignment from

⁷ R. S. B. C. (1897) c. 63.

⁸ R. S. C. (1886) c. 51, s. 8.

⁹ Kettlewell v. Watson, (1884) 26 Ch. D. 507, C. A., per Lindley, L.J.; Chapman v. Tanner, (1884) 1 Vern. 267; Mackreth v. Symmons, (1808) 15 Ves. 329; 1 W. & T. L. C. 6th ed., 355, where the cases on a

vendor's lien for unpaid purchase money and a vendor's lien for prematurely paid purchase money are collected.

¹⁰ Dryden v. Frost, (1837) 3 My. & Cr. 670; Armstrong v. Farr, (1885)

11 A. R. 191.

¹¹ Dryden v. Frost, (*supra*).

Atkinson, the vendor. It is to be observed, however, that the lien for the benefit of the vendor himself, as well as the lien by the possession of title deeds, are not reconcilable with the principle of that statute, but that nevertheless equity gives effect to them, and that the plaintiff's title rests upon the latter as well as upon the former, for here we have the vendor and the purchaser, to one or other of whom the title-deeds must, after satisfying the mortgages, belong, concurring in an arrangement for the payment to the plaintiff, being in possession of the title-deeds, of what remained unpaid of the purchase money."⁶

The lien may be lost by the nature of the dealing;⁷ or the nature of the contract may be such as to exclude vendor's lien.⁸

It was decided that vendor's lien for unpaid purchase money had priority over the lien created by a registered judgment against the vendee.⁹

It would not, however, be valid as against a registered instrument executed by the same party.¹⁰

In *Winter v. Lord Anson*,¹ the Lord Chancellor said:² "As, in this case, there was no agreement for the extinguishment of the lien, and as, in my judgment, there is nothing in the transaction itself, as evidenced by the instrument, leading to a clear and manifest inference that such was the intention of the parties, I think it should be declared that the plaintiffs have a lien upon the estate in question for the residue of the purchase money."

The plaintiffs, who were unpaid vendors of the property of a company in voluntary liquidation, and unable, from insolvency, to carry on its works, have been appointed receivers without security or salary.³

Bacon, V.-C., said:⁴ "The plaintiffs are mortgagees of the colliery, and shew a state of facts which may result in the positive de-

⁶ Per Lord Cottenham (lb.), p. 673; see also *Selby v. Selby*, (1828) 4 Rus. 336.

⁷ See *Scott v. Benedict*, (1834) 5 O. R. 1, affirmed, (1836) 14 S. C. R. 735.

⁸ See *In re Brentwood B. & C. Co.*, (1876) 4 Ch. D. 562, C. A.; *Clarke v. Royle*, (1830) 3 Sim. 499; *Buckland v. Pocknell*, (1843) 13 Sim. 406; *Dixon v. Gayfere*, (1857) 1 D. G. & J. 655; *Boulton v. Gillespie*, (1860) 8 Gr. 223; *Wilson v.*

Daniels, (1862) 9 Gr. 493; *Degear v. Smith*, (1865) 11 Gr. 570; *Gilmour v. Brown*, (1817) 1 Mason, 190, at p. 212.

⁹ *Hughson v. Davis*, (1853) 4 Grant, 588.

¹⁰ R. S. O. 1897, c. 136, s. 98.

¹ (1827) 3 Russ. 488.

² At p. 492.

³ *Boyle v. Bettws, Llantwit C. Co.*, (1876) 2 Ch. D. 726.

⁴ *Ib.*, p. 728.

struction of the property. The liquidator has not the means for carrying on the colliery, and is quite powerless to remedy the evil, and if I do not interfere I must suffer the property of the plaintiffs to be entirely destroyed."⁵

Mortgages. Where the owner of a mine mortgages it, and remains in possession, he may continue to work the mines on the mortgaged property, provided by so doing he does not jeopardise the security of mortgagees.⁶

A mortgagee in possession of the mortgage property may continue to work opened mines, but unless his security be insufficient, is not entitled to open new mines.

There is no difference in respect to this rule between a mine and a quarry.⁴

If the mine was open when the mortgagee took possession it is immaterial that it was opened after the date of the mortgage.⁵

The opening of a mine after the date of a mortgage by the owner of the inheritance will enure to the benefit of the mortgagee.⁶ A mortgagee with a sufficient security cannot commit waste, or rather cannot dispose of any part of the inheritance.

And if a mortgagee so circumstanced, not being authorized so to do, opens mines or allows others to open mines on the mortgaged property, he will be charged with the full value of the minerals taken without being allowed any part of the working expenses.

The principle on which the cost of bringing the minerals to bank, and under certain circumstances the cost of severing, are allowed, even to a trespasser, in estimating the damages awarded against him for wrongful abstraction, does not apply in taking accounts between mortgagor and mortgagee.⁷

The Statute of Limitations would not operate to bar such a claim, as the mortgagee stands in a fiduciary relation towards the mortgagor.⁸

The Lords Justices on appeal⁹ intimated that the Statute of Limitations would be a complete defence as against the persons al-

⁵ *Perry v. Oriental Hotel Co.*, (1870) L. R. 5 Ch. 420; *Campbell v. Campagnie G. de B.*, (1876) 2 Ch. D. 181, distinguished.

⁶ *Seton on Decrees*, 5th Ed., p. 480.

⁴ *Elias v. Griffith*, (1878) 8 Ch. Div. 521.

⁸ *Elias v. Snowdon*, (1879) 4 App.

Cas. 454.

⁵ *Clavering v. Clavering*, (1726) 2 P. Wms. 388.

⁷ *Hood v. Easton*, (1856) 2 Giff. 692; *Thorncroft v. Crockett*, 1848, 16 Sim. 445.

⁸ *Hood v. Easton*, (1856) 2 Giff. 698.

⁹ In the S. C. 2 Jur. N. S. 917.

lowed by the mortgagees to mine, if they were mere trespassers, but the case having been settled there was no decision on the appeal.

Where the security is insufficient, a totally different set of considerations arise. Then a mortgagee is entitled to make the most of the property for the purpose of realizing what is due to him. He may cut timber, he may open a mine, and the Court will not by injunction interfere to prevent his doing so, provided he is not committing wanton destruction, in which case the Court will interfere and prevent him. But where a mortgagee so circumstanced acts *bona fide*, the Court will never interfere to prevent his felling timber and opening a mine, and the like, but he does it at his own risk and peril; so that if he incurs a great loss in working the mine, he cannot charge a penny of that loss against the mortgagor, and if he obtains a great profit the whole of that profit must go in discharge of his mortgage debt.¹⁰

In taking the accounts under a decree or order in a redemption action against a mortgagee of mines in possession, the mortgagee is entitled to necessary repairs under the head of just allowances, but to entitle him to permanent improvements or substantial repairs he must make out a case for them at the trial.¹

If a mortgagee in possession engages in speculative undertakings, he does so at his own risk, that is if there is a profit, such profit will go in reduction of the mortgage debt, but if there is a loss the mortgagee cannot charge such loss against the mortgagor, unless there is a valid agreement that he may do so.

This rule was applied in *Hughes v. Williams*² to the case of a quarry, but in his judgment the Lord Chancellor stated that the principle would extend to the case of a mine.

The mortgagee is not bound to engage in adventures and speculations for the benefit of the mortgagor, but is liable only for wilful default.

The rule was stated by Lord Eldon, L.C., in *Rowe v. Wood*,³ to be that mortgagees in possession are not bound to advance more than a prudent owner. They are bound to work with due care and attention, and if loss or damage to mortgaged mines is caused by any improper working by the mortgagees or any per-

¹⁰ Per Romilly, M.R., in *Millett v. Davey*, (1862) 31 Beav. 470.

¹ *Tipton Green Colliery Co. v.*

The Tipton Meat Co., (1877) 7 Chy. Div. 192.

² (1806) 12 Ves. 493.

³ (1822) 2 J. & W. 556.

sons acting by their permission or authority, the mortgagees will be charged with the amount of such loss or damage.⁴

To entitle a mortgagor to the appointment of a receiver as against a mortgagee in possession, whose mortgage is not satisfied, there must be clear mismanagement of a particular and specified nature.⁵

A colliery company executed a mortgage to a banking company by sub-demise of their lands, mines and seams of coal, and other premises comprised in certain leases, and also their buildings and some of their fixed machinery. Default having been made of principal and interest, the bank took possession of the mines and appointed a receiver of the income, but did not work the mines. They afterwards brought a foreclosure action against the colliery company, and moved for a receiver and manager of the colliery, and it was held,⁶ that the Court would, in the exercise of its discretion, appoint a receiver and manager, although the mortgagees had taken possession and appointed a receiver of the income.⁹

Foreclosure, and not sale, is the remedy of an equitable mortgagee of a share in a mining partnership.⁷

Partition. In Ontario, under "The Partition Act,"⁸ all joint tenants, tenants in common, and co-parceners, all dowresses and parties entitled to dower, tenants by the curtesy, mortgagees or other creditors having liens on, and all parties whomsoever⁹ interested in, to, or out of any lands in Ontario, may be compelled to suffer partition or sale of the said lands, or any part or parts thereof, and the partition may be had whether the estate is legal and equitable or equitable only. If the Court or a Judge considers a sale more advantageous to the parties interested the land may be sold under the direction of the Court instead of being partitioned.

"Land" in this Act is¹⁰ defined to include lands, tenements and hereditaments, and all estates and interests therein, and therefore would include mines.

⁴ *Taylor v. Mostyn*, (1886) 33 Ch. Div. 237.

⁵ *Rowe v. Wood*, 2 J. & W. 556.

⁶ *Distinguishing Whitley v. Chailis*, (1892) 1 Ch. 64.

⁹ *County of G. B. v. Rudry Merthyr, S. & H. C. C. Co.*, (1895) 1 Ch. 629 (C. A.)

⁷ *Redmayne v. Foster*, (1866) L. R. 2 Eq. 467.

⁸ R. S. O. (1897) c. 123, s. 5.

⁹ Not including a sole tenant for life, *Fisken v. Ife*, (1897) 28 O. R. 595.

When partition is asked of a mining property the Court would usually be compelled by the exigency and circumstances of the case to direct a sale.¹

In *Rickards v. Rickards*² a sale was directed instead of a partition, there being coal beds under a portion of the lands.

In New Brunswick the law relating to the partition of lands is provided for in the Act respecting "The Supreme Court in Equity,"³ and may be effected by the Court in a suit brought therein for that purpose.⁴ If a beneficial partition of the estate is found difficult to be made, a sale may be made of any part by portions or otherwise, at public auction.⁵

Where A. and B., being tenants in common in fee in a lot of land, under the surface of which was plaster rock, made partition thereof by deed, A. releasing to B. all his right in the western half of the lot, and granting to him the right of digging and carrying off plaster from the quarries on the eastern half; and B. releasing to A. all his right in the eastern half, except the plaster therein, which was to continue in common as before, B. retaining and reserving his original right of digging and carrying away the same. In trespass by the plaintiff, claiming through A. against the defendant, claiming through B., it was held that B. never parted with his right as owner in fee of the plaster in the eastern half of the lot, and that such right, on his death vested in his heirs, though there were no words of inheritance in the exception; that B.'s right to dig and carry away plaster was not a mere license, expiring at his death, but an absolute reservation of ownership, with the same legal incidents as if the partition had not been made; that the right of B.'s grantee to dig for plaster was not confined to quarries opened at the time of the partition; that it was not essential to B.'s reservation of the right to enter and dig, that he should have given A. any specific compensation for such right.⁶

Where A. and B., tenants in common of a lot of land, divided it without a deed of partition, and afterwards occupied their separate

¹ By s. 2, s.-s. 1.

² *Per Romilly, M. R.*, in *Wild v. Milne*, (1859) 26 Beav. 504.

³ (1867) 36 L. J. N. S. Ch. 176.

⁴ *C. S. N. B.* (1877) c. 49, ss. 117-123.

⁵ Section 117.

⁶ Section 120.

⁷ *Prince of Wales Coal Co. v. Osman*, (1882) 22 N. B. R. 115

portions according to that division, J. afterwards coming into possession under A. of his part, it was held that J. had a right to avail himself of the partition and of A.'s occupation.⁷

In Nova Scotia the law relating to the partition of lands is contained in the Revised Statutes of Nova Scotia (fifth series) c. 122, which, as amended by Acts of 1894, c. 19, s. 1, provides that all persons holding lands or mining areas as joint tenants, co-parceners or tenants in common,⁸ may be compelled to divide the same, either by writ of partition at the common law,⁹ or in the manner provided by the Act.¹⁰ No tenant for any term of years, unless twenty years thereof at the least remain unexpired, shall maintain a petition against any tenant of the freehold; but when two or more persons hold jointly or in common as tenants for any term of years, either of them may have his share set off and divided from the others in the same manner as if they had all been tenants of the freehold.¹ Such partition between two or more tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners.² If there are several petitioners they may have their shares set off together, or the share of each one may be set off in severalty, at their election.³

In British Columbia the "Partition Act"⁴ provides⁵ that in an action in which a judgment for partition might formerly have been given, if the parties interested to the extent of one moiety or upwards in the property in question, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly. In certain cases the Court may direct a sale in lieu of partition on the request of any of the parties interested.⁶ If any party interested requests a sale, the Court may direct a sale unless the other parties interested, or some of them, undertake to purchase his share at a valuation.⁷

⁷ *Jones v. Morgan*, (1882) 22 N. B. R. 115.

⁸ See *McNeill v. McDougall*, (1896) 28 N. S. R. 296.

⁹ *Doane v. McKenny*, (1854) 2 N. S. R. 328; *James* 328.

¹⁰ Section 1.

¹ Section 4.

² Section 5.

³ Section 18.

⁴ R. S. B. C. (1897) Ch. 149.

⁵ Section 7.

⁶ Section 8.

⁷ Section 9.

Registry Acts. In Ontario "The Registry Act"¹ provides:—

After any grant from the Crown of lands in Ontario, and letters patent issued therefor, every instrument affecting the lands or any part thereof comprised in the grant shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless such instrument is registered, in the manner herein directed, before the registering of the instrument under which the subsequent purchaser or mortgagee claims.²

The registration of any instrument, under this Act or any former Act, shall constitute notice of the instrument, to all persons claiming any interest in the lands, subsequent to such registration, notwithstanding any defect in the proof for registration, but nevertheless it shall continue to be the duty of every Registrar not to register any instrument, except on such proof as is required by this Act.³

Every instrument capable of registration and having the proper affidavit of execution attached thereto shall be deemed to be registered when and so soon as the same is delivered to and received at his office during office hours by the Registrar or some officer or clerk in his office, and the proper fees paid and tendered.⁴

Priority of registration shall prevail unless before the prior registration there has been actual notice of the prior instrument by the party claiming under the prior registration.⁵

No equitable lien, charge, or interest affecting land shall be deemed valid in any Court in Ontario as against a registered instrument executed by the same party, his heirs or assigns.⁶

The Registry Act ceases to apply to land as to which a certificate by the Master of Titles of the first registration of an owner under the Land Titles Act is registered in the registry division in which the land is situate.⁷

The application of the Registry Act to lands, the letters patent for which are forwarded to the Local Masters of Titles pursuant to section 169 of the Land Titles Act, is not expressly negated.

¹ R. S. O. 1897, c. 136.

² Section 87.

³ Section 92.

⁴ Section 96.

⁵ Section 97.

⁶ Section 98.

⁷ The Land Titles Act, R. S. O. 1897, c. 138, s. 18.

Registration of a mortgage before patent, is notice whether under the Heir and Devisee Commission or not.⁸

Registration before patent is applicable only to mortgages, liens or incumbrances.⁹

Assignments, to be registered in the Crown Lands Department, pursuant to section 19 of the Public Lands Act,¹ must be unconditional.

The Land Titles Act² applies to the county of York, including the city of Toronto; the county of Elgin, including the city of St. Thomas; the county of Ontario, and to the districts of Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay and Rainy River only; but provision is made³ for extending the operations of the Act popularly referred to as the "Torrens system of land titles," to other counties, cities or towns. When letters patent for any land situate in Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay or Rainy River are issued, the same shall be forwarded to the Local Master of Titles of the district for the purpose of the patentee being entered as the first registered owner of the land, with any necessary qualifications.⁴

"The first registration under 'The Land Titles Act' of any person as owner of land (in this Act referred to as first registered owner) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:—

1. To the incumbrances, if any, entered on the register;
2. To such liabilities, rights and interests, if any, as are by this Act declared for the purposes of the Act not to be incumbrances, unless, under the provisions of this Act, the contrary is expressed on the register.
3. Where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, to any unregistered estates, rights, interests or

⁸ *Vance v. Cummings*, (1867) 13 Gr. 25; *Watson v. Lindsay*, (1881) 6 O. A. R. 609. As to effect of notice of unregistered assignment before patent: *Goff v. Lister*, (1868) 14 Gr. 451; R. S. O. (1897) c. 28, s. 19.

⁹ *Holland v. Moore*, (1866) 12 Gr.

296. This was a decision under section 24 of chapter 80 of C. S. U. C., now found in R. S. O. (1897) c. 31, s. 28.

¹ R. S. O. 1897, c. 28.

² R. S. O. (1897) c. 138, s. 2.

³ By section 161.

⁴ Section 169.

equities to which such persons may be entitled; but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors, which are within the legislative jurisdiction of this Province.⁵

These provisions must be read in connection with the other provisions as follows:

All registered land shall, unless under the provisions of this Act the contrary is expressed on the register, be deemed to be subject to such of the following liabilities, rights, and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed incumbrances within the meaning of this Act; that is to say:

"1. Statutory or municipal taxes and water rates, for the current year;

"2. Any municipal charges, rates or assessments theretofore imposed for local improvements, and payable during the current year or afterwards;

"3. Any public highway, any right of way, water-course, and right of water, and other easements;

"4. Any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the registered land; and the description of the land shall not, as against adjoining owners, be conclusive as to the boundaries or extent thereof;

"5. Any lease or agreement for a lease, for a period yet to run, of not exceeding three years, where there is actual occupation under the same;

"6. Any right of the wife or husband of the person registered as owner to dower or curtesy (as the case may be) in case of surviving such owner;

"7. Any right of appropriation which may by statute be vested in any person, or body corporate.⁶

"(2) If the applicant desires the certificate to declare the title to be free from the first six of the said particulars, or any of them, his application shall so state, and the investigation shall proceed accordingly."⁷

⁵ Section 13.

⁶ Section 26, s.-s. (1).

⁷ Section 26, sub-section (2); R.

S. O. (1887) c. 116, s. 24 (2); R. S.

O. (1887) c. 116, s. 24 (1); 56 Vict. c. 22, s. 5.

Land registered under the Land Titles Act shall be deemed to have been and to be subject to the rights of the licensees under the Crown Timber Act for the current license year, or of his assignee, and the rights of Her Majesty in the pine trees under the Free Grants and Homesteads Act, or any statute for which the same is substituted, without the fact of the land being so subject being expressed in the entry in the register or in the certificate of ownership.¹⁰ That all lands registered under the said Act shall be subject to the provisions of the Revised Statutes respecting mills and dams,¹ and of the Revised Statute for protecting public interest in rivers, streams and creeks,² without the fact of such land being so subject being expressed in the entry in the register or in the certificate of ownership.³

Provision is made for excepting from the effect of registration any estate, right or interest arising before a specific date or arising under a specific instrument or otherwise particularly described in the register; a title registered subject to such excepted estate, right or interest shall be called a qualified title.⁴

The registration of a person as first registered owner of land with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.⁵

After the registration in the registration division in which the land is situated of a certificate by the Master of Titles of the first registration of an owner under this Act, the Registry Act,⁶ shall cease to apply to said land.

Provision is also made for a separate register of leasehold land,⁷ and for the creation of charges by the registered owner of the land.⁸

Section 41 provides that every registered owner of land may transfer such land.

A transfer for valuable consideration of land registered with an absolute title shall, when registered, confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:

¹⁰ Section 27.

¹ R. S. O. (1897) c. 140.

² R. S. O. (1897) c. 142.

³ Section 28.

⁴ Section 16 (sub-section 2).

⁵ Section 16, sub-section (3).

⁶ R. S. O. 1897, c. 136.

⁷ Sections 19-24.

⁸ Sections 33-40.

1. To the incumbrances, if any, entered on the register; and
2. To such liabilities, rights, and interests, if any, as are by this Act declared for the purposes of the Act not to be incumbrances (unless the contrary is expressed on the register).

But free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors, which are within the legislative jurisdiction of this Province."

Sections 75 and 79 provide for cautions against registered dealings,¹⁰ and section 81 for inhibition by the Court or the Master of Titles of any dealing with registered land or with a registered charge.

In *re Clagstone and Hammond*¹¹ it was held, that as the Land Titles Act relates mainly to conveyancing, whatever dealing gives a valid claim to call for or receive a conveyance of land is an "interest" within the scope of the statute; and an appointee or nominee of the purchaser of an interest in lands has a *locus standi* as a cautioner and where such an appointee registered a caution as owner, and there was no doubt of the substantial nature of his claim, his caution was supportable as against any objection in point of form, by virtue of s. 131; and, also, that an action brought by the original purchaser, after the registration of her appointee's caution and pending proceedings to set it aside, for specific performance of a contract to convey to her the interest in respect of which she had made the appointment, did not, under the circumstances in evidence, put an end to such appointment.

Sections 85 to 88 deal with cautions against the entry of land on the register.

The Master of Titles may register the owner of any incorporeal hereditament of freehold tenure enjoyed in gross, also the owner of any mines or minerals where the ownership of the same has been severed from the ownership of the land, in the same manner, and with

⁹ Section 45; R. S. O. 1887, c. 116, s. 37.

¹⁰ In *re Macdonald v. Sullivan*, (1890) 14 P. R. 60, Boyd, C., sustained an order of the Master of Titles, under section 76, to the effect "that entry of the cessation of the caution be made upon the registered owner giving security for the amounts claimed by the cautioner against the land (pay-

ment to be made according to the result of a pending action), and until such entry be made, the caution is to continue to have effect," and held that under s. 76, s.-s. 2, the Master could direct an unconditional extension of the caution.

¹¹ (1897) 28 O. R. 499; 17 C. L. T. 195 (Boyd, C.)

the same incidents in and with which he is by this Act empowered to register land, or as near thereto as circumstances admit.¹

Section 32 of the Act provides, that a title to any land adverse to or in derogation of the title of the registered owner shall not be acquired by any length of possession.

Elaborate rules for carrying the Act into effect have been made, and have the same force as if enacted in the Act itself, and shall be judicially noticed.²

In Quebec. Arts. 2082 to 2182, inclusive, of the Civil Code of Lower Canada, deal with the registration of real rights. All Acts, *inter vivos*, conveying the ownership of an immovable, must be registered at length or by memorial. In default of such registration the title cannot be invoked against a subsequent purchaser for value from the same vendor whose title is registered.³

In New Brunswick. "The Registry Act"⁴ provides⁵ that "every conveyance duly acknowledged or proved and registered shall be effectual for the transferring of the lands therein described, and the possession thereof, according to the intent of such conveyance without *livery of seisin* or any other act." Before the instrument can be registered the execution thereof is required to be acknowledged by the person executing the same or be proved by the oath of a subscribing witness.⁶ The acknowledgment may be taken or made before any notary public, certified under his hand and official seal.⁷

"In any registered conveyance, in pursuance of this Act, where-by an estate of inheritance in fee simple is limited to the grantee or bargainee and his heirs, the words 'grant, bargain and sell' therein shall only amount to a covenant by the grantor or bargainor that he has done no act to encumber the land described in such conveyance; provided, however, that nothing in this section shall be held or construed so as to prevent the said words from amounting to a conveyance, or to prevent the same from being sufficient to convey and transfer all the right and title of the grantor or bargainor executing such conveyance."⁸

"No mortgage, judgment or other encumbrance on land, shall have priority by reason of being held by or vested in a person who has a prior registered mortgage or incumbrance of the same land; in any action brought by a mortgagor, his heirs, executors or assigns,

¹ Section 102.

² Section 153.

³ Art. 2098.

⁴ 57 V. (1894) c. 20 (passed 21st April, 1894).

⁵ Section 36.

⁶ Ib. s. 47.

⁷ Ib.

⁸ Ib. s. 58.

no defendant, except the mortgagee, his heirs, executors or assigns, shall set up the mortgage to bar the right of recovery, or defeat the title of the mortgagor, his heirs, executors or assigns."⁹

"The registration of any instrument under this Act shall constitute notice of the instrument to all persons claiming any interest in the lands subsequent to such registration, notwithstanding any defect in the proof for registration. . . ." ¹⁰

"Instrument" includes every deed, conveyance, mortgage, lease, etc., and "land" includes lands, tenements, hereditaments, appurtenances and real estate.¹

In Nova Scotia the law regarding registry of deeds and encumbrances affecting lands is contained in the Revised Statutes of Nova Scotia (fifth series), c. 84, as amended by subsequent Acts, as follows: In 1887 by chapters 32 and 34; in 1889 by chapter 49; in 1892 by chapter 32; in 1893 by chapter 37; and in 1894 by chapter 23.

Deeds or mortgages of lands duly executed but not registered shall be void² against any subsequent purchaser, or mortgagee for valuable consideration, who shall first register his deed or mortgage of such lands.³

No mortgage, judgment,⁴ or other encumbrance affecting lands shall have any priority or effect by reason of being held by or vested in the same person with another mortgage or encumbrance of prior date and registry.⁵

A judgment duly recorded and docketed shall bind the lands of the party against whom the judgment shall have passed, from and after the registry thereof in the county or district wherein the lands are situate as effectually as a mortgage, whether such lands shall have been acquired before or after the registering of such judgment; and deeds or mortgages of such lands, duly executed but not registered, shall be void against the judgment creditor who shall first register his judgment.⁶

Leases of land for a term exceeding three years shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, unless such leases shall have been pre-

⁹ *Ib.* s. 64.

¹⁰ *Ib.* s. 69.

¹ *Ib.* s. 2.

² See *Grindley v. Blakie*, (1886) 19 N. S. R. 27; 7 R. & G. 27; *West v. Matheson*, (1879) 9 N. S. R. 429; 3 N. S. D. 429.

³ R. S. N. S. (5th ser.) c. 84, s. 18.

⁴ *Jost v. McCuish*, (1893) 25 N. S.

R. 519.

⁵ *Ib.* s. 19.

⁶ *Ib.* s. 21.

viously registered, and a reasonable rent reserved in good faith therein.⁷

Grants of land shall be recorded in the office of registry of deeds of the county in which the lands lie.⁸

In British Columbia. The Land Registry Act in force in British Columbia is to be found in the Revised Statutes of British Columbia (1897), Chapter 111. The owner in fee of any land whose title to which shall have been registered for seven years, may apply to the Registrar for a certificate of indefeasible title,⁹ which, when granted, is conclusive evidence in all Courts of Justice that the person named therein is the absolute owner of an indefeasible fee simple in the real estate therein mentioned against the whole world (the Crown only excepted), subject as therein expressly set forth.¹⁰

The North-West Territories. The title to land in territories and the conveyance, transfer and registration thereof are governed by The Land Titles Act, 1894, 57-58 Vict. (Dom.) c. 28, as amended by 60-61 Vict. (Dom.) c. 30.

By section 2, sub-section (q), the expression "territories" is defined to mean the North-West Territories, the district of Keewatin, and all other territories of Canada, and would therefore include the district of Yukon.

As the Torrens system is in force in several of the mining districts of Ontario and in all the territories of Canada the following decisions in which the Australian Land Transfer Acts have been considered are referred to.

As to effect of transfer from judgment debtor after copy of writ of *fi. fa.* filed. See *The Registrar of Titles v. Paterson*.³

In *National Bank of Australia v. The United Hand in Hand*,⁴ it was held on appeal from the Supreme Court of Victoria, that where a registered mortgagee of leasehold estate sells either under statutory power or as absolute owner no interest therein passes to the purchaser until registration.

In *McEllister v. Biggs*,⁵ it was held by the Privy Council that although an unregistered deed is not effectual to pass any estate or interest in land, it is sufficient to transfer a right to come into Court, and ask that the certificate of title be set aside for fraud.

⁷ *Ib.* s. 25.

⁸ *Ib.* s. 26.

⁹ Section 71.

¹⁰ Section 75.

³ (1876) 2 App. Cas. 110.

⁴ 1879, 4 A. C. 391.

⁵ 1883, 8 A. C. 314.

In *Manning v. The Commissioner of Titles*,⁶ it was held by the Privy Council that on the true construction of sections 19 and 21 of the West Australian Transfer of Land Act, 1874, although the prescribed formalities have been complied with the Commissioner has a discretion to refuse to register subject to the opinion of the Supreme Court under section 120.

In *Gibbs v. Messer*,⁷ the Privy Council held, reversing the Supreme Court of Victoria, that although the Victorian "Transfer of Land Statute" provides that every one who purchases in good faith and for value from a registered proprietor and enters his deed of transfer or mortgage on the register shall thereby acquire an indefeasible title, notwithstanding the infirmity of his author's title, yet a mortgage entered on the register by *bona fide* mortgagees, such mortgage having been executed in the name of a fictitious and non-existing transferee, whose name was entered as proprietor as the result of a forged transfer, was invalid.

Lord Watson said:⁸ "Although a forged transfer or mortgage, which is void at common law, will, when duly entered on the register, become the root of a valid title in a *bona fide* purchaser by force of the statute, there is no enactment which makes indefeasible the registered right of the transferee or mortgagee under a null deed. . . . The duty of ascertaining the identity of the principal for whom an agent professes to act with the person who stands on the register as proprietor, and of seeing that they get a genuine deed executed by that principal, rests with the mortgagees themselves, and if they accept a forgery they must bear the consequences."

The provisions as to time may be waived by the parties for whose benefit they are introduced.¹

This was shown by Lord Davey,² to be an illustration of the maxim, *Quilibet potest renunciare juri pro se introducto*.

Settled Estates. On any sale of land under "The Settled Estates Act,"²¹ any earth, coal, stone or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court deems advisable.²²

⁶ (1890) 15 A. C. 195.

⁷ 1891, A. C. 248.

⁸ At p. 257.

¹ *Wilson v. McIntosh*, 1894, A. C. 129; as to effect of omission to record an easement, see *James v. Stevenson*, (1893) A. C. 162; as to the burden of proof as between ap-

plicants for first registration and caveators, etc., see *Solling v. Broughton*, (1893) A. C. 556.

² At p. 133.

²¹ R. S. O. 1897, c. 71.

²² Section 18, which is identical with R. S. B. C. 1897, c. 171, s. 23.

CHAPTER IX.

SUPPORT.

Support. *Prima facie* the owner of land has a natural and legal right to the undisturbed enjoyment of that land in its natural condition, which involves the right of vertical support¹ from the subjacent mines and minerals, and of lateral support² from the adjacent land.

Campbell, C.J., says, in *Humphries v. Brogden*:³ "The rule as to support stands on natural justice, and is essential to the protection and enjoyment of property in the soil, although it places a restraint on what a man may do with his own property, it is in accordance with the precept, *sic utere tuo ut alienum non laedas*." And at p. 745, the same learned Judge says: "The rule giving the right of support to the surface upon the minerals in the absence of any express grant, reservation or covenant, must be laid down generally without reference to the nature of the strata, or the difficulty of propping up the surface, or the comparative value of the surface and the minerals. We are not aware of any principle upon which qualifications could be added to the rule."

An injunction will, in a proper case, be granted restraining the mineral owner from working so as to cause a subsidence of the surface, though the consequence may be that the mines can not be worked at all.⁴

¹ *Harris v. Ryding*, (1839) 5 M. & W. 60; *Humphries v. Brogden*, (1850) 12 Q. B. 739; *Smart v. Morton*, (1855) 5 E. & B. 30; *Dugdale v. Robertson*, (1857) 3 K. & J. 695; *Davis v. Treharne*, (1881) 6 App. Cas. 466; *Pountney v. Clayton*, (1883) 11 Q. B. D. 820; *Dixon v. White*, (1883) 8 App. Cas. 833; *Love v. Bell*, (1884) 9 App. Cas. 286; *Darley Main Colliery Co. v. Mitchell*, (1886) 11 App. Cas. 127.

² *Humphries v. Brogden*, (1850) 12 Q. B. 744; *Corporation of Birmingham v. Allen*, (1877) 6 Ch. D. 284; *Snarr v. Granite C. & S. Co.*, (1882) 1 O. R. 102; *McCann v. Chisholm*, (1883) 2 O. R. 506.

³ (1850) 12 Q. B. 744.

⁴ *Wakefield v. Buccleuch*, (1866) L. R. 4 Eq. 613; *Hext v. Gill*, (1872) L. R. 7 Ch. App. 699.

The plain principle is that no one can interfere with the absolute and indefeasible right of another unless where such interference is made necessary by the wrongful act of the person possessing the right.⁴¹

In *Birmingham v. Allen*,⁵ the Court of Appeal held, affirming Jessel, M.R., that "the support to which a landowner is entitled from the adjacent land is confined to such an extent of adjacent land as, in its natural undisturbed state, was sufficient to afford the requisite support."

There is nothing at common law to prevent the owner of such adjacent land from draining the soil, for the rule as to support does not extend to subterranean water.⁶

This rule may be waived, varied or altered by statute or by binding agreement, *inter partes*, and the right to let down the surface, even without making compensation, may be conferred on the mineral owner, by express words or necessary implication.

As pointed out by Jessel, M.R., in *Mundy v. Rutland*,⁷ parties may make any agreement they please; and in *Aspden v. Seddon*⁸ the Court must give effect to the contract between the parties. "*Modus et conventio vincunt legem.*"⁹

Any one may renounce or waive the benefit of a right introduced entirely in his own favour.

In *Dixon v. White*,¹⁰ Lord Blackburn said, at p. 843, "It is established that the titles may show that the surface is held on the terms that the owner of the minerals is at liberty to remove the whole of them without leaving any support to the surface."¹

⁴¹ Per Lord Cranworth, in *Tapling v. Jones*, (1865) 11 H. L. C. 290, 314; quoted with approval by Lord Davey, in *Simpson v. Godmanchester*, (1897) A. C. 708.

⁵ (1877) 6 Ch. Div. 284.

⁶ *Popplewell v. Hodgkinson*, (1869) L. R. 4 Ex. 248; *Elliott v. N. E. Ry. Co.*, (1863) 10 H. L. C. 333, where an accidentally flooded mine was allowed to be pumped out though the result was to diminish support.

⁷ (1883) 23 Ch. Div. 81.

⁸ (1875) 10 Ch. App. 399.

⁹ *Rowbotham v. Wilson*, (1857) 8 E. & B. 150; *Smith v. Darby*, (1872) L. R. 7 Q. B. 726.

¹⁰ (1883) 8 App. Cas. 843.

¹ *Rowbotham v. Wilson*, (1860) 8 H. L. C. 348; *Aspden v. Seddon*, (1875) 10 Ch. App. 394; *Andrew v. Buchanan*, (1873) L. R. 2 H. L. Sc. 286.

Clear and unambiguous words are, however, necessary.²

In *Mundy v. Duke of Rutland*³ the Court of Appeal held, that the proviso in the lease to the plaintiff there in question was unintelligible, and determined the rights of the parties independently of the proviso. *Incerta pro nullis habentur*.

In *Davis v. Treharne*⁴ Lord Blackburn says: "I think it must be taken as perfectly settled ground that as of common right the surface land has a right to be supported by subjacent strata of minerals."

Selborne, L.C., in *Love v. Bell*,⁵ after quoting the above passage as the most convenient way of putting the matter, adds, "Whoever claims against that has the burden of proof thrown upon him."

In *Bell v. Dudley*,⁶ Chitty, J., says: "Where, as here, the ownership of the minerals and of the surface is severed, the *prima facie* inference is that the owner of the surface shall enjoy the surface allotted, and shall have the common right of support for his tenement. This inference is strong; in order to rebut it the burden lies on the owner of the minerals to shew affirmatively and by clear words that he has the right of letting down the surface. When clear words are spoken of, it is not meant that the Act must say in express terms that the mineral owner may let down the surface. That such express words are not required is shewn by *Duke of Buccleuch v. Wakefield*, and by the decision of the House of Lords on a Scotch instrument in *Buchanan v. Andrew*."⁷

Buildings. In *Bonomi v. Backhouse*⁸ Willes, J., says, "The right to support of land and the right to support of buildings stand upon different footings as to the mode of acquiring them, the former being *prima facie* a right of property analogous to the flow of a natural river, or of air, etc., whilst the latter must be founded upon

² *Twyerould v. Chamber Colliery Co.*, (1892) W. N. C. A. p. 27; *Davis v. Treharne*, (1881) 6 App. Cas. 460; *Dixon v. White*, (1883) 8 App. Cas. 833; *Love v. Bell*, (1884) 9 App. Cas. 286; *Hext v. Gill*, (1872) L. R. 7 Ch. Ap. 699; In *Consett Waterworks Co. v. Riltson*, (1889) 22 Q. B. D. 318, 702, the Court of Appeal decided that the special and definite language of the Inclosure Act,

there in question, gave the mine owner the right to work the mines so as to let down the surface of the land without paying damages or making compensation.

³ (1882) 23 Ch. Div. 81.

⁴ (1881) 6 App. Cas. 466.

⁵ (1884) 9 App. Cas. 289.

⁶ (1895) 1 Ch. 186.

⁷ (1873) L. R. 2 H. L. Sc. 286.

⁸ (1859) E. B. & E. 654.

prescription⁸¹ or grant, express or implied: but the character of the rights, when acquired, is in each case the same."

This distinction was approved by Selborne, L.C., in *Dalton v. Angus*,⁹ and in that case Lord Blackburn says, at p. 809, "I think that the decision of this House in *Backhouse v. Bonomi* also conclusively settles this, that though the right of support to a building is not of common right, and must be acquired, yet, when it is acquired, the right of the owner of the building to support for it, is precisely the same as that of the owner of land to support for it."

In *Midland Ry. Co. v. Robinson*¹⁰ Lord Herschell points out that "The common law right of adjacent support does not extend to the increased burden caused by buildings or other works, but is limited to that which the land requires in its natural state."¹

Nature of The Right. There has been much judicial discussion as to the precise nature and origin of the right to support.

In *Dalton v. Angus*, Lord Selborne and five of the other Judges who gave opinions, including Lords Coleridge and Watson, held the right to be an easement. Lord Penzance and Pollock, B., held it was not an easement, following the opinion of Lord Wensleydale in *Bonomi v. Backhouse*. Bowen, J., referred to it as a pseudo-easement. Lord Blackburn thought it was more properly described as a right of property which the owner of the adjoining land is bound to respect than an easement.¹¹ This is practically the view of Lord Cranworth in *Backhouse v. Bonomi*.

In *Lemaitre v. Davis*,² Hall, V.-C., followed the view of Selborne, L.C., and held that the right to support is a right within the

⁸¹ In order that an easement may be acquired by prescription the enjoyment must be *nec vi nec clam nec precario*: *Dalton v. Angus*, (1881) 6 App. Cas. 796; In *Tone v. Preston*, (1883) 24 Ch. Div. 739, no easement was acquired because the enjoyment of support was not as of right.

⁹ (1881) 6 App. Cas. 792.

¹⁰ (1889) 15 App. Cas. 30.

¹¹ See *Backus v. Smith et al.*, (1880) 5 A. R. 341; *Rogers v. Taylor*, (1858) 2 H. & N. 828; *Jeffries v. Williams*, (1850) 5 Exch. 792; *Bibby v.*

Carter, (1859) 4 H. & N. 153; *Richards v. Jenkins*, (1868) 18 L. T. N. S. 437. There is no obligation to repair on the part of the owner of the servient tenement, but the owner of the dominant tenement must repair, and he may enter on the land of the servient tenement for that purpose: *Pomfret v. Ricroft*, (1670) 1 Saund. 322; *Colebeck v. Girdlers Co.*, (1876) 1 Q. B. D. 243.

¹² P. 808.

² (1881) 19 Ch. Div. 281.

scope and provisions of the Prescription Act;³ in other words, that it is an easement within the meaning of the English enactment, which is identical with R. S. O., 1897, c. 133, s. 35. This was before the decision of the House of Lords in *Darley Main Colliery Co. v. Mitchell*.⁴ In that case, *Lamb v. Walker*,⁵ was expressly overruled, and the view of Lord Cranworth in *Bonomi v. Backhouse*⁶ cited with approval.

Lord Fitzgerald⁶¹ states the following propositions "as now settled in law":

"(1) That the owner of the surface has a natural and legal right to the undisturbed enjoyment of that surface in the absence of any binding agreement to the contrary.

(2) That the owner of the subjacent minerals may excavate and remove them to the utmost extent, but should exercise that right so as not to disturb the lawful enjoyment of the owner of the surface.

(3) That the excavation and removal of the minerals does not, *per se*, constitute any actionable invasion of the right of the owner of the surface, although subsequent events show that no adequate supports have been left to sustain the surface.

(4) But that, when, in consequence of not leaving or providing sufficient supports, a disturbance of the surface takes place; that disturbance is an invasion of the right of the owner of the surface, and constitutes his cause of action," and says,⁶² "It seems to me that *Backhouse v. Bonomi*⁷ did decide that the removal of the subjacent strata was an act (I will not say an innocent act) done in the legitimate exercise of ordinary ownership, which, *per se*, gave no right of action to the owner of the surface, and that the latter had no right of action until his enjoyment of the surface was actually disturbed. The disturbance then constituted his right of action."

This was followed by the Court of Appeal in *Crumbie v. Wallsend Local Board*,⁸ where Lord Esher, M.R., states,⁶¹ that the decision

³ 2 & 3 Wm. IV., c. 71, s. 2; In *Simpson v. Godmanchester Corporation*, (1897) A. C. 709, Lord Davey agreed with the opinion expressed by Lord Selborne in *Dalton v. Angus*, (1881) 6 App. Cas. 798, that this section (which is identical with R. S. O. (1897) c. 133, s. 35) is not confined to rights of way and water courses; but includes easements of every description, notwithstanding the contrar. opinion expressed by Erle, C.J., in

Webb v. Bird, (1848) 2 Ph. 774.

⁴ (1886) 11 App. Cas. 127; see *A. G. v. Conduit Colliery Co.*, (1895) 1 Q. B. 312.

⁵ (1878) 3 Q. B. D. 389.

⁶ (1861) 9 H. L. C. 503.

⁶¹ (1886) 11 App. Cas. 127, at pp. 147-8.

⁶² At p. 151.

⁷ (1861) 9 H. L. C. 503.

⁸ (1891) 1 Q. B. D. 503.

⁶¹ At p. 508.

of the House of Lords in *Darley Main Colliery Co. v. Mitchell*,⁹ has settled the law on the subject.

It is no answer to an action for interfering with a right to support by working mines, to show that the mines have been worked with ordinary care and without negligence.¹¹

Statute of Limitations. In *Backhouse v. Bonomi*,¹⁰ which Pollock, B., refers to in *Dalton v. Angus* ¹ as the most important of the decided cases upon the subject, the House of Lords decided that the right of a person to the support of the land immediately around his house is not in the nature of an easement, but is the ordinary right of enjoyment of property, and, until that is interfered with, he has no legal ground of complaint, although, in effect, something may have been done which, without his knowledge, has occasioned results that will afterwards affect his property. A. was the owner of certain houses standing on land which was surrounded by the lands of B. C. and D. E. was the owner of mines running underneath the lands of all three persons. He worked the mines in such a manner (without actual negligence) that the lands of B., C. and D. sank in; and after more than six years' interval their sinking occasioned an injury to the houses of A.

The House of Lords, in that case, held, that a right of action accrued to A. when this injury actually occurred, and that his right was not barred by the Statute of Limitations.²

The *Darley Main Colliery Co. v. Mitchell*,³ was a case of the invasion of the right of the surface owner to the support of his land by a subjacent seam of coal; but the same principles govern the right to lateral support.

Severance. In *Midland Ry. Co. v. Haunchwood*,⁴ Lord Westbury observes that "There is no distinction between the severance of ownership vertically, that is, of the surface lands from the mines beneath, and the severance of ownership laterally."

⁹ (1886) 11 App. Cas. 127.

¹¹ *Haines v. Roberts*, (1857) 7 E. & B. 625; *Hunt v. Peake*, (1860) 29 L. J. N. S. Chy. 785. As to what damages must be shown in order to sustain action for infringement of right of support: see *Smith v. Thackeray*, (1866) L. R. I. C. P. 564; *Attorney-General v. Conduit Colliery Co.*, (1895) 1 Q. B. 301.

¹⁰ (1861) 9 H. L. C. 503.

¹ (1881) 6 App. Cas. 740.

² See *Bonomi v. Backhouse*, (1858) E. B. & E. 623.

³ (1886) 11 App. Cas. 127.

⁴ (1882) 20 Ch. Div. 552; see *Richards v. Jenkins*, (1868) 18 L. T. N. S. 437, where the differences between the rights and obligations of the owners of adjacent and subjacent mines, in respect of the support of buildings, are discussed.

In *Mundy v. Duke of Rutland*,⁵ the above principles were applied to a case where the owner of land, under which there were strata of coal, demised one of the upper strata to the plaintiff, and afterwards some of the strata of coal underlying the coal demised to the plaintiff to the defendant company.

Jessel, M.R., said, p. 96, "It is quite plain that the grantor in a grant in fee, *a fortiori*, that the lessor in a lease cannot derogate from his own grant."

It is doubtful whether the common law right of lateral support would be held to exist in cases where lands are located and granted for the purposes of hydraulic mining.⁶

Where the severance results from statute, as for instance, in grants of mining rights under The Ontario Mines Act, to a person other than the owner of the surface, the respective rights are governed by the statute by virtue of which the severance takes place.⁶¹

Grant, Reservation And Exclusion of Right. The grant of the right of support of buildings or other burdens upon land may be express or implied. In *London & N. W. Ry. Co. v. Evans*,⁷ Bowen, L.J., says, at p. 28: "In dealing with an ordinary grant of lands it is undoubted law that, where such grant is made for a specific purpose, such as the construction on the lands of a house, canal, railway, or other permanent work, the grant, in the absence of a contrary intention appearing on its face, carries with it by implication, the right of reasonable and necessary support for the works so to be erected from the subjacent or adjacent lands of the grantor. This maxim of law and of good sense applies whether the grant is voluntary or under the compulsory powers of a statute."⁸

In *Caledonia Railway Co. v. Sprot*,⁹ it was held that "a conveyance of land to a railway company for the purposes of the line, gives a right by implication to all reasonable subjacent and adjacent support connected with the subject-matter of the conveyance; and,

⁵ (1883) 23 Ch. Div. 81.

⁶ *Murchie v. Black*, (1865) 19 C. B. N. S. 190; *Robinson v. Grave*, (1873) 27 L. T. 648; *Rigby v. Bennett*, (1882) 21 Ch. D. 559; *Phillips v. Low*, (1892) 1 Ch. 47; *Shubbook v. Tufnell*, (1882) 46 L. T. N. S. 836.

⁶¹ It has been held that there is nothing in the Goldfields Act, 1866, of New Zealand, rendering the

common law right of lateral support inapplicable to lands held for mining purposes: *The Great Extended Sluicing Co. v. Hales*, Mac. 896; the N. Z. Digest, 1861 to 1892, p. 505.

⁷ (1893) 1 Ch. 16.

⁸ See *Elliot v. North Eastern Railway Co.*, (1863) 10 H. L. C. 323, 357.

⁹ (1856) 2 Macq. 449.

therefore, although, in the conveyance to the railway company the minerals are reserved, the grantor is not entitled to work them, even under his own land, in any manner calculated to injure the railway.

On the same principle, if the owner of a house conveys the upper story, reserving all below, the purchaser will be entitled, on general principles, without stipulation, to prevent any damage to the walls underneath.

But, if I grant a meadow to A., for grazing purposes, retaining the minerals and the adjacent land, and if A., having no warranty against subsidence, thinks fit to build a house on the edge of the meadow, and the house falls, he is without remedy against me, and has himself alone to blame for the consequences.

If, however, the grant were made expressly for building purposes, there would then be an implied warranty of support, both subjacent and adjacent."

In *Elliott v. N. E. Ry. Co.*,¹⁰ it was held "that a vendor of land, having sold it under an Act of Parliament for the particular purposes of a railway, can not afterwards work the minerals under the surface (though they have been expressly reserved to him, either by his grant or by the provisions of the company's own act), in such a manner as to prejudice the use of the land for the purposes for which it has been purchased."

London & North-Western Railway Co. v. Evans,¹ was a case upon the construction of a private Act of George 2nd, by which the undertakers, "who were not made a corporation, were authorized to make an existing brook navigable. . . . The Act contained no reference to minerals. The brook was made into a canal, but no conveyances to the undertakers were made,—compensation being made to the landowners by annual payments. The navigation subsequently became vested in the plaintiffs. The defendants, who were owners of coal under the canal, worked it so as to cause a subsidence, and the plaintiffs brought their action for an injunction on the ground that they had a right to support."

It was held on appeal that where an express statutory right is given to make and maintain something requiring support, the statute, in the absence of a controlling context, must be taken to mean that the right of support shall accompany the right to make and maintain; that if the Act does not provide any means of obtaining compensation for the loss occasioned to the landowner by his having

¹⁰ (1863) 10 H. L. C. 333.

¹ (1893) 1 Ch. Div. 16.

to leave support, this is a strong argument against the Legislature having intended to give such right; but that if it contains provisions under which compensation can be obtained, it needs a strong context to shew that the right to support is not given; that under the Act, in the present case, compensation could have been successfully claimed for the damage occasioned to the landowners by making their mines unworkable. That the Legislature, therefore, must be taken to have intended to give a right of support, and that the plaintiffs were entitled to an injunction.

In *Aspden v. Seddon* and *Preston v. Seddon*,² the facts were that the owner in fee of an estate granted away a portion of it which, ultimately, became the property of the plaintiff, but reserved a rent-charge (subsequently redeemed), and also the minerals under the land so granted and the right to work them, paying compensation for all damage that should be done thereby to the erections on the land. The grantee (for the better securing of the rent-charge) covenanted to build a mill on the land granted to him. The owner in fee afterwards granted to the defendants' predecessor in title the minerals, rights, and liberties so reserved, and also the other and adjacent portions of the estate. The defendants, who took with notice of the agreement as to the payment of compensation, worked the minerals under the plaintiff's land, and also the minerals under their own land, and by the operation of one or other of these workings, or by their joint operation, let down the surface of the plaintiff's land, and so injured the mill which had been built there in accordance with the covenant: and it was held that the right to work the subjacent mines being subject to the condition of paying compensation, the plaintiff could maintain an action for the injury done to the mill by the working of those mines; also, that if the injury arose from the working of the mines under the adjacent lands, or from the combined effect of working those mines and the subjacent ones, the plaintiff was still entitled to recover.

The vendor of land adjoining other land of his own under which are mines and minerals, and who knows at the time of the sale that the vendee is about to erect upon the land so purchased substantial buildings, impliedly covenants that he will not use or permit the adjoining land to be used in such a manner as to derogate from his grant.

² (1876) 1 Exch. D. 496.

A. sold land to B. for the purpose of an iron-foundry. Adjoining the land so sold to B., A. had other land under which was coal. A. afterwards leased the minerals to C., who commenced working the coal within such a distance from the land of B. as to be reasonably calculated to endanger its stability. This was held ground for an injunction against A. and C., although no actual damage has been sustained by B.³

In *Harris v. Ryding*,⁴ A. being seised in fee of certain lands, granted the land to P., his heirs and assigns, reserving to himself, his heirs and assigns, "all and all manner of coals, seams and veins of coal, iron ore, and all other mines, minerals, and metals which then were, or at any time, and from time to time thereafter, should be discovered in or upon the said premises, etc., with free liberty of ingress, egress, and regress, to come into and upon the premises, to dig, delve, search for, and get, etc., the said mines and every part thereof, to sink shafts, etc., making a fair compensation to P. for the damage to be done to the surface of the premises, and the pasture and crops growing thereon."

Parke, B., said, at p. 70: "The rule of law is, that a reservation is to be construed strictly; still, however, it would reserve to the grantor all that was not conveyed by the grant, provided the meaning and intention of the parties be clear. What, then, is the meaning and intention of the parties here? It is clearly the meaning and intention of the grantor, that the surface shall be fully and beneficially held and enjoyed by the grantee, he reserving to himself all the mines and veins of coal and iron ore below. By reasonable intentment, therefore, the grantor can be entitled under the reservation only to so much of the mines below as is consistent with the enjoyment of the surface according to the true intent of the parties to the deed, that is, he only reserves to himself so much of the mines and minerals as could be got, leaving a reasonable support to the surface. That is the true construction of this deed, in order to make it operate according to the intention of the parties. It never could have been in their contemplation that, by virtue of this reservation of the mines, the grantor should be entitled to take the whole of the coal and let down the surface, or injure the enjoyment of it."

*Dugdale v. Robertson*⁵ decided that there is a *prima facie* inference at common law upon every demise of minerals or other sub-jacent strata, where the surface is retained by the lessor, that the lessor is not divesting himself of his own right to support. In the

³ *Siddons v. Scott*, (1877) 2 C. P. D. 572. ⁴ (1839) 5 M. & W. 60.

⁵ (1857) 3 K. & J. 695.

absence of express words showing clearly that he has waived or qualified his right, the presumption is, that what he retains is to be enjoyed by him, *modo et forma*, and with the natural support which it possessed before the demise.

Sir W. Page Wood, V.-C., said :⁵¹ "For the occupier of the surface had a *prima facie* right to the support of the subjacent strata, and the deed did not authorize any working in derogation of that right."

⁵² "And so, conversely, where the minerals are demised and the surface is retained by the lessor, there arises a *prima facie* inference at common law upon every demise of minerals or other subjacent strata, that the lessor is demising them in such a manner as is consistent with the retention, by himself, of his own right to support, as in the case put in the judgment of the House of Lords,⁶ of a demise of the upper part of a house." . . . "It is true there may be an express stipulation, as there was in *Rowbotham v. Wilson*, by which the owner of the surface waives his right to support. . . . But in the absence of express words, showing distinctly that he has waived or qualified his right, the presumption is, that what he retains is to be enjoyed by him, *modo et forma*."

In *Smart v. Morton*,⁷ the declaration charged that C. occupied buildings, the reversion belonging to plaintiff; and that plaintiff was entitled to have the building supported by the contiguous mines underground; but defendant wrongfully, carelessly, negligently and improperly, and without leaving proper and sufficient support in that behalf, worked coal mines. The defendants pleaded that they worked properly, etc., denying negligence, but this was held to be no answer, the occupier of the surface having a *prima facie* right to the support, and the deed not authorizing any working in derogation of such a right. It was shewn that defendant had not in fact left supports, and the damage had accrued therefrom; but that if defendant was not bound to leave supports, the work was necessary for winning all the coal, and properly executed; and it was attempted to shew that, some years after the execution of the deed, it had become customary to win all the coal without leaving supports.

Surface-owner v. Mine-owner. Lord Campbell, C.J.:⁷¹ "The rights and obligations of parties, where the surface of land be-

⁵¹ *Ib.*, p. 699.

⁵² *Ib.*, p. 700.

⁶ *Caledonia Ry. Co. v. Sprot*,
(1856) 2 Macq. 449.

⁷ (1858) 5 E. & B. 30.

⁷¹ *Ib.*, p. 45.

longs to one owner and the minerals under it belong to another, appear to be well settled by the two cases of *Harris v. Ryding*,⁸ and *Humphries v. Brogden*.⁹

"*Prima facie*, the owner of the surface is entitled to support from the subjacent strata; and, if the owner of the minerals works them, it is his duty to leave sufficient support for the surface in its natural state. But the *prima facie* rights and obligations of the owner of the surface and of the minerals may be varied by the production of title deeds, or by other evidence."

Where the conveyances of an estate in a mining district, sold in lots, contained an exception of all mines and minerals under the land included in the lot conveyed, with full power for the grantor to work, get, and dispose of them, without entering upon the land sold, and without being answerable for any injury to the land, or any buildings on it, by reason of working or getting the excepted mines or minerals, and without being liable to any action or suit for any such injury, it was held that a purchaser of two of the lots was not entitled against the grantor to either vertical or lateral support for the surface of his land.¹⁰

Sir W. Page Wood, V.-C., said:¹¹ "The grantor has, therefore, done something more than reserve the mines. He has reserved them with the right to work them, without being responsible for damage. It was contended that a man could not derogate from his own grant, and that a grant of the surface included everything necessary for its support; but it is impossible for me to hold that the words here are otherwise than a plain contract that the grantor may work the mines without regard to the surface; and this disposes of the question as to the vertical support."

"Then as to the lateral support, that appears to me to be in the same position. The contract is, that the defendant shall be entitled to raise the minerals, and work through the adjacent property. The express contract, in fact, covers the whole case; and any damage that may be done, either by vertical or lateral working, is within the reservation."

In *Buddleuch v. Wakefield*,² the terms of a reservation of mines in special Inclosure Act were held to give the right to work such mines to the fullest extent, even though destruction of the surface

⁸ (1839) 5 M. & W. 60.

¹¹ At p. 988.

⁹ (1850) 12 Q. B. 739.

² (1870) L. R. 4 E. & I. 377.

¹⁰ *Williams v. Bagnall*, (1866) 12 Jur. N. S. 987.

resulted, there being a liability of the mine owner to make compensation for the damage done to the owner of the surface.

In *Smith v. Darby*,³ the declaration was for mining under the plaintiff's land without leaving proper support, whereby the foundation of plaintiff's mill and other buildings gave way, and the buildings fell. It was set up that S., the plaintiff's predecessor in title, was seised in fee of the said land, etc., and of the subjacent mines, and by an indenture of lease demised all the veins of minerals, etc., with full power to the lessees and assigns to get the minerals from the old pits, and sink fresh pits, they, the lessees and assigns, making reasonable satisfaction to the lessor and his tenants for the damage done to them respectively by the surface of the lands being covered with rubbish or otherwise injured, etc. This answer was held sufficient, for the terms of the lease implied that it was intended that the lessees of the mines should have the right to work the mine so as to undermine the surface, subject only to paying damages according to the covenants.

Blackburn, J.: There is no doubt about the rights of the grantee of minerals, and they cannot be more accurately stated than by Lord Wensleydale in *Rowbotham v. Wilson*.⁴

Lush, J., said: ⁴¹ "It is clearly shown that the intention of the parties was that the lessees should take away all the minerals they found, even though the effect might be to injure the surface, only making such compensation as was therein provided.

In *Eadon v. Jeffcock* ⁵ a bed of coal called the High Hazel Bed, was demised, with working powers, to persons from whom the defendants took by assignment. The lessees were to pay a minimum rent, etc., "including all ribs and pillars left in working the said coal, except the pillars for the support of the shafts, the pillars between the deep and counter level, the pillars all round the estate, and the pillars under the homestead and farm buildings." These pillars, of specified dimensions, the lessees bound themselves to leave "during the whole of the term," and they also covenanted to work the mines "according to the best of their judgment, skill, and discretion, in a good and workmanlike manner."

The pillars specified in the lease were left; and the defendants worked according to the usual course of mining in the district; but their workings caused a subsidence, which injured the land

³ (1872) L. R. 7 Q. B. 716.

⁴ (1860) 8 H. L. C. 360.

⁴¹ At p. 728.

⁵ (1872) L. R. 7 Exch. 379.

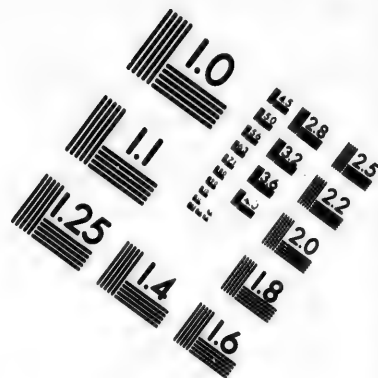
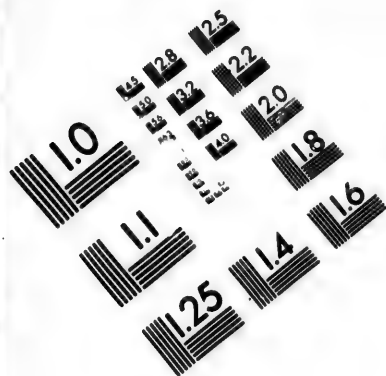
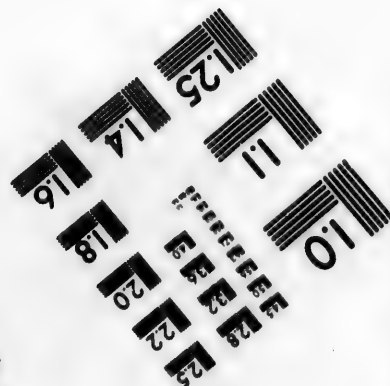
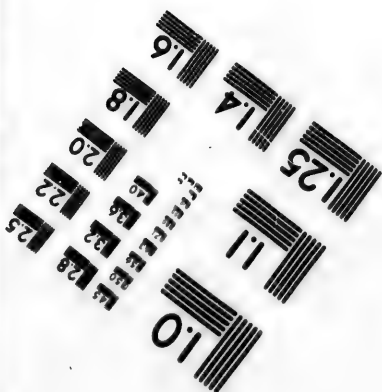
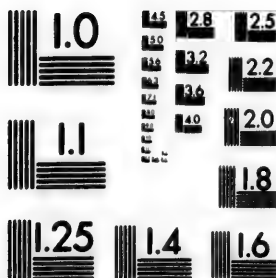


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of the plaintiffs and buildings erected thereafter. The land would have subsided without the buildings, and it was held that, it appearing by the lease to be the intention of the parties that all the coal should be removed, except the specified pillars, and the defendants having worked the mine in a proper manner, they were held not liable for the injury.

In a case where the claim was for working mines under the plaintiff's land without leaving sufficient support for the surface, the defendant pleaded in his statement of defence that he was the lessee of the mines from the lord of the manor; that the plaintiff's land had, previously to the passing of an Inclosure Act under which the waste of the manor was inclosed and allotted, formed part of such waste; that the lord of the manor from time immemorial had been accustomed to work the mines under the waste without leaving sufficient support for the surface, and without making any compensation for injury so caused, etc., and it was held, that the defence must succeed, on the ground that, whether any valid custom such as alleged in the statement of defence existed previously to the Act or not, the Act expressly gave to the lord of the manor and his assigns the right to let down the surface by mining without making any compensation.⁷

In *Brown v. Robins*,⁸ the plaintiff was the owner of a house erected in 1834 on solid ground. Previously to the building of the house, a portion of the minerals had been gotten under a garden which adjoined the house. In 1838 a portion of the minerals was gotten under the defendant's land which adjoined the garden. In 1855 the defendant commenced getting out the rest of the minerals under the land.

In 1857 the plaintiff's land sunk and the house was injured by the defendant's mining operations. It was found by the jury that the sinking of the plaintiff's land was caused by the defendant's workings, damage would have happened but not to the same extent if the garden ground had been left solid. That the defendant knew of the excavations under the garden. That the land would have sunk in just the same whether there was a house on it or not, and lastly that the damage to the plaintiff's house by the sinking was £300, occasioned solely by the defendant's workings, and £50 caused in part by the excavation under the garden.

⁷ *Gill v. Dickinson*, (1880) 5 Q. B. D. 159; *Beckett v. Bradley*, (1862)

31 L. J. Q. B. 65, not followed.
⁸ (1859) 4 H. & N. 186.

It was held that inasmuch as the sinking of the plaintiff's land was in no way caused by the weight of the house, the plaintiff was entitled to recover whether he had acquired a right to support for his foundations by the defendant's soil or not, and that although the excavation under the garden contributed to the extent of £50 to the cause of the damage, the plaintiff was entitled to the whole £300; because if the defendant had not done the wrongful act complained of, no part of the damage would have followed.

Subsidence. In *Stroyan v. Knowles*,⁹ where the working of mines, in however careful a manner, has caused a subsidence of the adjacent land, the owner is entitled to recover in respect of the damage to buildings thereon, although erected within twenty years, provided their weight did not contribute to the subsidence.

Pollock, C.B.:¹⁰ "Then it was said the plaintiff had no right of support for buildings; but we think that if their being there did not contribute to the subsidence (as the arbitrator finds), the plaintiff is entitled to damages for injury to them through the defendant's wrongful act in causing the land to subside—the ground on which they stood. This was decided in *Brown v. Robins*."¹⁰

If a party builds a house on his own land, which has previously been excavated to its extremity for mining purposes, he does not acquire a right to support for the house from the adjoining land of another, at least until twenty years have elapsed since the house first stood on excavated land, and was in part supported by the adjoining land, so that a grant by the owner of the adjoining land, of such right to support, may be inferred; for, rights of this sort can have their origin only in grant.¹¹

Alderson, B.:¹² "If the law stood as it did before Lord Tenterden's Act,¹³ we should say that such a grant ought not to be inferred from any lapse of time short of twenty years after the defendants might have been or were fully aware of the facts. And even since that Act, the lapse of time, under these peculiar circumstances, would probably make no difference. For, the proper construction of that Act requires that the easement should have been enjoyed for twenty years under a claim of right. Here, neither party was acquainted with the fact that the easement was actually used at all; for, neither party knew of the excavation below the house. We should probably, therefore, have been of opinion that there was no user of the

⁹ (1861) 6 H. & N. 454.

& W. 220.

¹⁰ *Ib.*, p. 465.

¹² Page 229.

¹¹ (1859) 4 H. & N. 186.

¹³ 2 & 3 Wm. IV. c. 71, s. 2; see

¹² *Partridge v. Scott*, (1838) 3 M.

R. S. O. (1897) c. 133, s. 35.

easement under a claim of right, and that Lord Tenterden's Act, therefore, would not apply to a case like this. However, the facts of this special case do not raise that point."

In *Greenwell v. Beechburn Coal Co.*,¹ it was held, following *Davis v. Treharne*,² that damage caused by subsidence was not covered by the compensation clause in a deed by which mines were granted with power to the grantee and his assigns to work making reasonable compensation for all damage occasioned to the surface of the land by the exercise of the powers by the deed granted, and that, therefore, the assigns of the grantee were liable to an action to recover damages for injury done to the surface of the land by subsidence caused by working the mines.

And also that a lessee of underground strata is not liable in damages to the owner of buildings on the surface, who has acquired a right to have the buildings uninjured by underground workings, for injury occasioned to the buildings by reason of subsidence happening during the currency of the lease, but resulting from an excavation made in the underground strata by the lessee's predecessor in title prior to the date of the lease.

¹ (1897) 2 Q. B. 165; followed in Nova Scotia by Mr. Justice Graham, in a judgment delivered 20 December, 1897 (not yet reported, but printed as a note to s. 20 of

the Nova Scotia Mines Act, c. xvii., *infra*) and now standing for judgment in appeal in the Supreme Court of Nova Scotia.

² (1881) 6 App. Cas. 460.

CHAPTER X.

WATER, VENTILATION, ETC.

Water. It has now been settled that the right to the enjoyment of a natural stream of water on the surface, *ex jure naturae*, belongs to the proprietor of the adjoining lands, as a natural incident to the right to the soil itself, and that he is entitled to the benefit of it, as he is to all the other natural advantages belonging to the land of which he is the owner. He has the right to have it come to him in its natural state, in flow, quantity and quality, and to go from him without obstruction, upon the same principle that he is entitled to the support of his neighbour's soil for his own in its natural state. This statement of the law by Lord Wensleydale, in *Chasemore v. Richards*,¹ was adopted by Lord Cairns in *Lyon v. Fishmongers*,² and is quoted with approval by Lord Selborne, L.C., in *North Shore Ry. Co. v. Pion*.³

In *Caldwell v. McLaren*⁴ Lord Blackburn, says, at p. 404: "There can be no doubt that by the law of England the owner of the soil on both sides of a running stream, whether it be navigable or not, is *prima facie* at least owner of the soil which forms the bed of the stream, and as owner of his land covered by water, has all the rights of a landowner. But this is subject to all rights of the owners above him to have the water flow away from their land, and to all rights of the owners below him to have the flow come to them as it was wont. It is also subject to any rights which the public have over it."

Riparian Rights. As pointed out by Lord Selborne in *Lyon v. Fishmongers*, the word "riparian" is relative to the bank, and not to the bed of the stream. The rights of a riparian proprietor, so far

¹ (1859) 7 H. L. C. 349.

² (1877) 1 App. Cas. 683.

³ (1889) 14 App. Cas. 621.

⁴ (1884) 9 App. Cas. 392; as to how far the English Common Law is in force in Canada, see Chap. VIII. *sub nom.* "Under water

areas," and "*Ad medium flum.*"

See also *Farquharson v. Imperial Oil Co.*, (1898) 18 C. L. T. 135; *Withers v. Purchase*, (1889) 60 L. T. N. S. 819; see also statutory provisions referred to *infra*.

as they relate to any natural stream, exist, *jure naturae*, because his land has by nature the advantage of being washed by the stream, and do not depend on the ownership of the bed of the stream.

To quote again from Lord Selborne: "It is, of course, necessary for the existence of a riparian right, that the land should be in contact with the flow of the stream; but lateral contact is as good, *jure naturae*, as vertical."⁵

To constitute a foundation for natural riparian right, it is sufficient that this contact should exist daily in the ordinary and regular course of nature, though it may not continue during the whole of any day.⁶

In the *North Shore Ry. Co. v. Pion*, and *Lyon v. Fishmongers*, the general law as to riparian rights was held to apply to navigable and tidal rivers, with the qualification that the public right of navigation must not be obstructed or interfered with.⁷

In *Hamelin v. Bannerman*⁸ the Privy Council decided, affirming the judgment of the Court of Queen's Bench in Quebec, that a riparian proprietor on a navigable river can acquire an interest in its water power derived from a reservoir artificially formed by a dam, and sell the same as appurtenant to his land, and that even if such sale is not effectual, as against the public, the vendor cannot himself impeach it on that ground.

In *Miner v. Gilmour*,⁹ an appeal from the Court of Queen's Bench of Lower Canada, Lord Kingsdown says:

"By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land; for instance, to the reasonable use of the water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have, in case of a deficiency, upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors, either above or below him. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation. But he has

⁵ *Lyons v. Fishmongers*, (1876) 1 App. Cas. 683; see *Attrill v. Platt*, (1884) 10 S. C. R. 425, 489.

⁶ *North Shore Ry. Co. v. Pion*, (1889) 14 App. Cas. 622.

⁷ *Bell v. Corporation of Quebec*, (1879) 5 App. Cas. 84; *Booth v. Ratte*, (1890) 15 App. Cas. 188; *Orr Ewing v. Colquhoun*, (1877) 2 App. Cas. 839.

⁸ (1895) A. C. 237.

⁹ (1858) 12 Moo. P. C. 131; see *Earl of Sandwich v. The Great N. R. Co.* (1879) 10 Ch. D. 707, 712, per Bacon, V.C.; *Medway Navigation Co. v. Romney*, (1861) 9 C. B. N. S. 575, where a private Act of Parliament was held to create a new species of statutory property and interest in the water.

no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury."

The above quotation is stated by Lord Blackburn, in *Commissioners of French Hoek v. Hugo*,¹⁰ to have been often cited, and always with approval.

It was pointed out that it did not appear that for the purposes of this case, any material distinction exists between the French and English law.¹

The principle is expressed by the rule of the civil law: *Sic enim debere quem meliorem agrum suum facere, ne vicini deteriore faciat*.¹¹

Young v. Bankier Distillery Co.,² was a Scotch case upon riparian rights, but, at p. 697, Lord Watson observes, that the law of Scotland upon the point there in question, was the same as the law of England.

In *Booth v. Ratte*,³ the Privy Council decided that a riparian owner is at liberty to construct and moor to his bank a floating wharf, which was held not to be an obstruction to navigation, and is entitled to maintain an action for injuries thereto caused by an unauthorized interference with the flow and purity of the stream. The riparian owner also owned the bed of the stream where the wharf was built.

In *North Shore Ry. Co. v. Pion*,⁴ the Privy Council held there was no distinction in principle between riparian rights on the banks of navigable or tidal, and on those of non-navigable, rivers.

In *Caldwell v. Fraser* (*supra*) the question of riparian rights was considered by Rose, J., who held that the owner of a mine on terra firma was not entitled to an injunction restraining the owners of the adjoining property, which consisted of land covered by navigable waters, from erecting a crib for mining purposes in such navigable waters, on the ground that the plaintiff's patent from the Crown was subsequent to that of the defendant, and that, therefore, the plaintiff took his property subject to the defendant's right to work.

The owner of land abutting on the chain reserved by the Crown for a public highway along the Kaministiquia River, who was also the

¹⁰ (1885) 10 App. Cas. 344. See also *Swindon Waterworks Co. v. Wilts & Berks Navigation Co.*, (1875) L. R. 7 E. & I. App. 697, where the rights of riparian owners on the upper and lower portions of a stream are discussed and explained: *Sandwich v. G. N. Ry. Co.*, (1878) 10 Ch. Div. 707, and as to what is a reasonable use.

Ellis v. Clemens, (1892) 22 O. R. 216; *Embrey v. Owen*, (1851) 6 Exch. 353; *Sampson v. Hoddinott*, (1857) 1 C. B. N. S. 590.

¹ See also *North Shore Ry. Co. v. Pion*, (1889) 14 App. Cas. 619.

¹¹ *Embrey v. Owen* (*supra*), per Baron Parke, at p. 371.

² (1893) App. Cas. 691.

³ (1890) 15 App. Cas. 188.

⁴ (1889) 14 App. Cas. 612.

licensee of the interest of the Crown in such reserve, has been held by the Q. B. Divisional Court⁴¹ to be a riparian proprietor, and as such the owner of a water privilege on the river within the meaning of the Act respecting Water Privileges.⁴²

The rights of a riparian proprietor are inseparably attached to the soil, and considered as appurtenant to the land. A riparian owner, therefore, can not, by grant or license, confer upon a non-riparian owner, water rights so as to enable such non-riparian owner to sue other persons for an infringement of them.⁴³ Nor can he, except as against himself, confer on any one, who is not a riparian owner, any rights to the use of the water of the stream. Any user of such water by a non-riparian proprietor, even under a grant from a riparian proprietor, is wrongful and will be restrained by injunction, if it sensibly affects the flow of water by the lands of other riparian proprietors.⁴⁴

On the other hand, where the owner of land, not abutting on a river, with the license of a riparian owner, took water from the river, and after using it for condensing purposes in a saccharine factory, returned it to the river without abstraction, pollution or injury, it was held by the English Court of Appeal that a lower riparian owner could not obtain an injunction against the landowners so taking the water or against the riparian owner through whose land it was taken.⁴⁵

The title to the soil constituting the bed of a river does not carry with it any exclusive right of property in the running water of the stream, which can only be appropriated by severance, and which may be lawfully so appropriated by every one having a right of access to it.⁴⁶

⁴¹ *Re Jenison*, (1897) 28 O. R. 136.

⁴² *R. S. O.* (1887) c. 119, now *R. S. O.* (1897) c. 141.

⁴³ *Stockport Waterworks Co. v. Potter*, (1864) 3 H. & C. 300. The Judges in the majority were, Pollock, C. B., and Channell, B., Bramwell, B., dissented, and subsequently in *Nuttall v. Bracewell*, (1866) L. R. 2 Ex. Div. 1, expressed his view that such rights were grantable. The decision of the majority was also discussed in *Halker v. Poritt*, (1873) L. R. 8 Ex. 115, but has not been overruled:

Omerod v. Todmorden Mill Co., (1883) 11 Q. B. D. 155; see also *Laing v. Whaley*, (1858) 3 H. & N. 675.

⁴⁴ *Omerod v. Todmorden Mill Co.*, (1883) 11 Q. B. D. 162.

⁴⁵ *Kensit v. G. E. Ry. Co.*, (1884) 27 Ch. Div. 122.

⁴⁶ *Per Lord Selborne*, in *Lyon v. Fishmongers*, (1876) 1 App. Cas. 683; *Wright v. Howard*, (1823) 1 Sim. & St. 203; *Macdonald v. Lake Simcoe Ice Co.*, (1898) 18 C. L. T. 178; *Embrey v. Owen*, (1851) 6 Ex. 353, 370, *per Parke*, B.

Water-course. The existence of a water-course, entitled to the protection of the law, is established, if it is shown that there is a sufficient natural and accustomed flow of water to form and maintain a distinct and defined channel.

In giving judgment in *Beer v. Stroud*,⁵ *Boyd, C.*, says: "It is not essential that the supply of water should be continuous, and from a perennial living source. It is enough if the flow arises periodically from natural causes, and reaches a plainly-defined channel of a permanent character"; or, as expressed by Lord Tenterden, in *Rex v. Oxfordshire*,⁶ "Water flowing in a channel between banks more or less defined."⁷

As pointed out by Lord Chelmsford in *Chasemore v. Richards*,⁸ *Rawstron v. Taylor*,⁹ and *Broadbent v. Ramsbotham*,¹⁰ both relate to surface water not flowing in any defined water-course.

Nuttall v. Bracewell,¹ shows that where a natural stream has been turned into an artificial channel, the character of the right is not changed, though the right does not rest on the same principle.²

In *Arkwright v. Gell*,³ it was held that a mine owner, who had used a drain through adjoining land for the purpose of draining his mine, was under no obligation to continue it for the benefit of those into whose land it runs.

This is an application of the fundamental principle that an easement exists for the benefit of the dominant owner alone, and that the servient owner acquires no right to insist on its continuance or to ask damages for its abandonment.³¹

Subterranean Water. The same principles apply to subterranean streams, which flow in defined and known channels, but do not

⁵ (1887) 19 O. R. 10, at p. 18; *Arthur v. G. T. R.*, (1895) 22 A. R. 89; *Williams v. Richards*, (1893) 23 O. R. 651.

⁶ (1830) 1 B. & Ad. 301.

⁷ *Taylor v. St. Helens*, (1877) 6 Chy. Div. 272; *McNab v. Robertson*, (1897) A. C. 129; See *Briscoe v. Drought*, 11 Ir. C. L. 264; *Ennor v. Barwell*, (1860) 2 Giff. 410.

⁸ (1859) 7 H. L. C. 375.

⁹ (1855) 11 Exch. 382.

¹⁰ (1856) 11 Exch. 602.

¹¹ 1866, L. R. 2 Ex. 1.

² *Gaved v. Martyn*, (1865) 19 C. B. N. S. 732; *Stockport Waterworks Co. v. Potter*, (1864) 3 H. & C. 300; *Holker v. Poritt*, (1873) L. R. 8 Ex. 107; also *Wood v.*

Waud, (1849) 3 Exch. 748, where *Pollock, C.B.*, at page 774, refers to the principles which regulate the law as to natural streams having been placed on their right footing in *Mason v. Hill*, (1833) 5 B. & Ad. 1, and the cases there cited; see also *Wadsworth v. McDougall*, (1870) 30 U. C. R. 369.

³ (1839) 5 M. & W. 203; *Singh v. Pattuk*, (1878) 4 App. Cas. 121; *Magor v. Chadwick*, (1840) 11 A. & E. 571.

³¹ *Oliver v. Lockie*, (1895) 26 O. R. 28; *Mason v. Shrewsbury & H. Ry. Co.*, (1871) L. R. 6 Q. B. 587; see also *Staffordshire Canal Co. v. Birmingham Canal Co.*, (1866) L. R. 1 E. & I. 254.

apply to water percolating through the ground in no defined or visible channel. In giving judgment in *Ballacorkish Silver and M. Co. v. Harrison*,⁴ where it was held that the holder of a mining lease from the Crown is not liable to make compensation for the withdrawal by percolation into his mines of water which would otherwise have flowed into, or having flowed into, would have been retained in the wells and springs of the superjacent land, Lord Penzance says, at page 60: "If the litigant parties had been the respective owners of two adjacent closes, and one of them, mining in his own land, had drawn off by natural percolation through the soil the water which fed a spring or well on the land of the other, there would have been no question to discuss; for the case of *Acton v. Blundell*,⁵ and *Chasemore v. Richards*⁶ have affirmed conclusively this proposition—that the disturbance or removal of the soil in a man's own land, though it is the means (by process of natural percolation) of drying up his neighbour's spring or well, does not constitute the invasion of a legal right, and will not sustain an action. And, further, that it makes no difference whether the damage arises by the water percolating away, so that it ceases to flow along channels through which it previously found its way to the spring or well; or whether, having found its way to the spring or well, it ceases to be retained there. . . . (61) The lord's right to the mines and minerals, it is to be observed, is affirmed by way of exception. . . . The legal effect of such an exception is undoubted; it was commented upon by Lord Hatherly in the case of *Proud v. Bates*:⁷ 'There is no doubt,' he says, 'but that the mines are altogether out of the demise, and never having been demised or parted with at all, the defendants are at liberty to use them as they think fit.' The rights of the lord or grantor in such cases are further illustrated and explained in *Duke of Hamilton v. Graham*.⁸ (62) How, then, are the respective rights to be reconciled? They cannot, in a legal point of view, be distinguishable from those of the owners of adjacent portions of the same close, the only difference being that the former are adjacent vertically instead of laterally. . . . (63) To hold otherwise might not improbably result in rendering the reservation of mines and minerals wholly useless. Percolation of water into mines to some extent is an absolute necessary incident of mining. And if the grant of the surface carries with it a right to be protected from any loss of surface water by this percolation, the owner of the surface would hold the owner of the mines at his mercy, for he would

⁴ (1873) L. R. 5 P. C. 49. See also *Harrison v. Harrison*, (1883) 16 N. S. R. 338; 4 R. & G. 338.

⁵ (1843) 12 M. & W. 324.

⁶ (1859) 7 H. L. C. 349.

⁷ (1865) 34 L. J. (N. S.) Eq. 411.

⁸ (1871) L. R. 2 H. L. Sc. App. 167.

be entitled by injunction to inhibit the working of the mines at all. It is not at variance with this view that the case of *Whitehead v. Parks*⁹ was decided, because in that case there was a lease and a distinct grant of the injured springs, *eo nomine*, and the injury was the act of one who claimed under the lessor, so that the question resolved itself into the meaning and construction of the words used in the lease, and did not depend on the rights to be assigned by the law to persons standing in certain relations of title to one another."¹⁰

Petroleum Oil and Natural Gas. The like law would also hold of petroleum oil and natural gas, which have been aptly referred to by a Pennsylvania Judge¹¹ as "*minerals feræ naturæ*." The owner of land may sink a well thereon and draw therefrom all the oil and gas that will naturally flow therefrom, although in so doing he may draw oil or gas from beneath his neighbor's land.¹²

Abstraction. In *Dickinson v. The Grand Junction Canal Co.*¹ it was decided that the company were liable to a mill owner, not only for the abstraction of water which formed part of the stream which the plaintiff was entitled to use for working his mills, but also for the abstraction of water which never did form part of the stream, but was prevented from doing so in its natural course by the excavation of a well by the company, whether the water was part of an underground water-course or percolated through the strata, on the ground that the plaintiff was entitled to the benefit of the stream in its natural course, and that he was deprived of part of that benefit when the natural supply of the stream was taken away.

Where water has been continuously abstracted from a river, for the purposes of a canal, so as to prevent the river from overflowing, for more than forty years, a lower riparian owner does not acquire

⁹ (1858) 2 H. & N. 870.

¹⁰ See *Grand Junction Canal Co. v. Shugar*, (1871) L. R. 6 Ch. App. 483; *New River Co. v. Johnson*, (1860) 2 E. & E. 436; see as to support from subterranean water, *Elliot v. The N. E. R. Co.*, (1863) 10 H. L. C. 333; *Popplewell v. Hodgkinson*, (1869) L. R. 4 Ex. 248.

¹¹ *Justice Mitchell in Westmoreland Natural Gas Co. v. De Witt*, (1890) 130 Pa. 235.

¹² The following American decisions as to gas and oil may be referred to: *Funk v. Haldiman*,

(1866) 53 Pa. 229; *Dark v. Johnston*, (1867) 55 Pa. 164; *Stoughton's Appeal*, (1878) 88 Pa. 198; *Acheson v. Stevenson*, (1891) 146 Pa. 239; *Hague v. Wheeler*, (1893) 157 Pa. 324; *Shepherd v. McCalumb Oil Co.*, (1885) 38 Hon. N. Y. 37; *Hughes v. United Pipe Lines*, (1890) 119 N. Y. 423; *Petroleum Co. v. West Virginia Transportation Co.*, (1886) 28 West Virginia, 210; *Williamson v. Jones*, (1894) 39 West Virginia, 231; *Brown v. Spilman*, (1895) 155 U. S. A. 665.

¹ (1852) 7 Exch. 282.

any right to have the abstraction continued so as to prevent the water overflowing his lands.¹¹

Fouling. Wood v. Waud² shows that riparian owners have a right to the purity of the water which flows through or by their land, and the pollution of the stream may be restrained by injunction. The fact that the stream is fouled by others is no answer to an action to restrain fouling by the defendant.³ Nor is it any answer to say that the defendant's trade is a lawful trade, carried on for purposes necessary or useful to the community.⁴

Ballard v. Tomlinson,⁵ decided that while Acton v. Blundell⁶ and Chasemore v. Richards⁷ had declared the right of a land-owner to remove underground water from his own land, when that water did not flow in any visible defined channel, yet that *prima facie*, no one has the right to foul water which another has the right to get.

In Young v. Bankier Distillery Co.,⁸ the House of Lords refused to follow the Pennsylvania doctrine laid down in Pennsylvania Coal Co. v. Sanderson,⁹ in regard to the right to foul water.

In Tipping v. Eckersley,¹⁰ an injunction was granted restraining the defendant from heating water which the plaintiff was entitled to use under a lease from the defendant.

¹¹ Mason v. Shrewsbury, (1871) L. R. 6 Q. B. 578; see also Dudden v. Guardians of Chilton Union, (1857) 1 H. & N. 627.

² *Supra*.

³ Crossley v. Lightowler, (1867) L. R. 2 Ch. 478.

⁴ Stockport Waterworks Co. v. Potter, (1861) 7 H. & N. 168; Pennington v. Brinsop Coal Co., (1877) 5 Ch. Div. 769.

⁵ (1885) 29 Ch. Div. 115; see also Hodgkinson v. Ennor, (1863) 4 B. & S. 229.

⁶ (1843) 12 M. & W. 324.

⁷ (1859) 7 H. L. C. 349.

⁸ (1893) A. C. 691.

⁹ (1886) 56 Am. Rep. 89; 113 Pa. 126, where all the American and English cases on the subject are collected, and where the Supreme

Court of Pennsylvania decided that one operating a coal mine in the ordinary and usual manner may, upon his own lands, drain or pump the water, which percolates into his mine, into a stream which forms the natural drainage of the basin in which the mine is situate, although the quantity of water may thereby be increased and its quality so affected as to render it totally unfit for domestic purposes by the lower riparian owners, and that the rights of such owners must *ex necessitate*, give way to the interests of the community, in order to permit the development of the natural resources of the country and to make possible the prosecution of the lawful business of mining coal.

¹⁰ (1855) 2 K. & J. 264.

The use for mining purposes, involving fouling of the water of a river flowing to a settled farming district where it may be required for domestic purposes is not an "ordinary use."¹¹

Where a mine owner can not exercise a right to discharge water and debris from a gold mining claim without trespassing on his neighbor's land, he is bound to refrain from exercising that right, and may be held liable,¹² although he is only one of a number of persons whose united acts are doing the injury.¹³

The Crown is not entitled for mining purposes to foul streams to the detriment of the holders of land under Crown grant.¹⁴

Neighbors. In *Baird v. Williamson*,¹ it was held that the owner of a mine at a higher level than an adjoining mine has a right to work the whole of his mine in the usual and proper manner for the purpose of getting out the minerals in any part of his mine; and he is not liable for any water which flows by gravitation into such adjoining mine from work so conducted. But he has no right by pumping or otherwise to be an active agent in sending water from his mine into the adjoining mine. In giving judgment, Erle, C.J., said at page 391, "The defendants, as occupiers of the higher mine, have no right to be active agents in sending water into the lower mine. The plaintiffs, as occupiers of the lower mine, are subject to no servitude of receiving water conducted by man from the higher mine. Each mine-owner has all rights of property in his mine, and among them, the right to get all minerals therefrom, provided he works with skill and in the usual manner. And if, while the occupier of a higher mine exercises that right, nature causes water to flow to a lower mine, he is not responsible for this operation of nature. If the owner of the lower mine intends to guard against this operation he must leave a barrier at the upper part of his mine, to buy back the water of his higher neighbour. The law imposing these regulations for the enjoyment of somewhat conflicting interests does not authorize the occupier of the higher mine to interfere with the gravitation of the water, so as to make it more injurious to the lower mine or advantageous to himself. This appears to us to be the law. For authority,

¹¹ *McIndoe v. The Jutland Flat* (Waipori) Gold Mining Co., (1892) 12 N. Z. L. R. 226; see *Miner v. Gilmour*, (1858) 12 Moo. P. C. C. 131, 156; *Omerod v. The Todrorden Joint Stock Mill Co.*, (1883) 52 L. J. Q. B. 445, 450; *Barton v. Howe*, (1875) 3 N. Z. C. A. 5, ap-

proved and followed in *McIndoe v. The Jutland Flat*, etc. (*supra*).

¹² On the principle of *Crossley v. Lightowler*, (1867) L. R. 2 Ch. 478.

¹³ *McMillan v. The Great Extended Sluicing Co.*, (1886) 4 N. Z. L. R. S. C. 377.

¹⁴ *Barton v. Howe* (*supra*).

¹ (1863) 15 C. B. N. S. 376.

we refer both to *Smith v. Kendrick* (*infra*), and also to the question left to the jury in *Acton v. Blundell*.²

This statement of the law was adopted by Lord Watson in *Young v. Bankier Distillery Co.*³

In *Bradford v. Pickles*,⁴ *Chasemore v. Richards*⁵ was followed. Lord Watson said at page 598: "No use of property, which would be legal if due to a proper motive, can become illegal because it is prompted by a motive which is improper or even malicious," and Lord Macnaghten at page 601: "It is the act, not the motive for the act, that must be regarded. If the act, apart from the motive, gives rise merely to damage without legal injury, the motive, however reprehensible it may be, will not supply that element."

User of Mines. "Water is a sort of common enemy, against which each man must defend himself."⁶

In delivering the judgment of the House of Lords in *Rylands v. Fletcher*,⁷ Lord Cairns, L.C., says at page 338: "The owners or occupiers of the close on which the reservoir was constructed might lawfully have used that close for any purpose for which it might in the course of the enjoyment of land be used; and if, in what I may term the natural user of that land, there had been any accumulation of water, either on the surface or underground, and if, by the operation of the laws of nature, that accumulation of water had passed off into the close occupied by the plaintiff, the plaintiff could not have complained that that result had taken place. If he had desired to guard himself against it, it would have lain upon him to have done so, by leaving, or by interposing, some barrier between his close and the close of the defendants in order to have prevented that operation of the laws of nature. As an illustration of that principle, I may refer to a case which was cited in the argument before your Lordships, the case of *Smith v. Kendrick*, in the Court of Common Pleas.⁸ On the other hand, if the defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground

² (1843) 12 M. & W. 324.

³ (1893) App. Cas. 697.

⁴ (1895) A. C. 587.

⁵ (1859) 7 H. L. C. 349.

⁶ *Smith v. Kendrick*, (1849) 7 C. B., per Creswell, J., 566, quoting Lord

Tenterden; *Nelld v. L. & N. W.*, (1874) L. R. 10 Ex. 4; *Whalley v. Lancashire & Y. R. Co.*, (1884) 13 Q. B. D. 131.

⁷ (1868) L. R. 3 H. L. 330.

⁸ (1849) 7 C. B. 515

in quantities and in a manner not the result of any work or operation on or under the land; and if in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the plaintiff, then it appears to me that that which the defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the plaintiff, and injuring the plaintiff, then for the consequence of that, in my opinion, the defendants would be liable."

"The same result is arrived at on the principles referred to by Mr. Justice Blackburn in his judgment, in the Court of Exchequer Chamber, where he states the opinion of that Court as to the law in these words: 'We think that the true rule of law is, that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or, perhaps, that the escape was the consequence of *vis major*, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.'"

These principles are well illustrated by the case of *Wilson v. Waddell*.⁹ There the defendant worked a coal seam carrying away the whole of it. The result was that the surface sank into pits and cracked into open fissures through which the rainfall flowed freely into the defendant's workings and (the coal in those workings having been removed) thence into the plaintiff's mine. It was decided that the defendant was not liable and that there was no servitude on the owner of the upper mines for the benefit of the owner of the mines on the dip to preserve either the surface or the subjacent minerals as water tight as the undisturbed state of the strata.

In *Fletcher v. Smith*,¹⁰ *Wilson v. Waddell*¹ is referred to as having decided that the defendant would not be liable as for a wrongful act for cracking and laying open the soil above his mine so as to let the rain water flow into the defendant's mine and thence into the plaintiff's mine.

It would be *damnum absque injuria* for which no action will lie.

In *Nichols v. Marsland*,¹¹ the Court of Appeal held that one who stores water on his own land and uses all reasonable care to keep it

⁹ (1876) 2 App. Cas. 95.

¹⁰ (1877) 2 App. Cas. 786.

¹ (1876) 2 App. Cas. 95.

¹¹ (1876) L. R. 2 Ex. Div. 1.

safely there, is not liable for damage effected by an escape of the water, if the escape be caused by *vis major*, thus deciding the question of law left undecided in *Rylands v. Fletcher*. Mellish, L.J., states¹² the principle to be that when the law creates a duty and the party is disabled from performing it without any default of his own by the Act of God or the king's enemies, the law will excuse him; but when a party by his own contract creates a duty, he is bound to make it good notwithstanding any accident by inevitable necessity.¹³

The Ontario Mines Act¹⁴ enacts that every mine shall be provided with proper and sufficient machinery and appliances for keeping such mine free from water, the accumulation or flowing of which might injuriously affect any other mine.

Diversion. In *Fletcher v. Smith*² the defendant who was there held liable had diverted a natural water-course which ran across and over his mine, and the diverted water-course had been so inefficiently constructed that on the occasion of certain heavy falls of rain, which the jury found to be exceptional, the water flowed over the top of the artificial bank of the diverted water-course, carried away part of that bank, and thus released poured down in large quantities through the fissures and holes in the surface and flooded the plaintiff's mine.

In *Crompton v. Lea*,³ Hall, V.-C., overruled a demurrer to a Bill which averred that a mine which the defendant threatened to work could not be worked without letting in a river and flooding the defendant's mine, and through that the plaintiff's mine.

A reservation in a Government grant of land of a right to make watercourses over it for the use and benefit of the public, has been held to include a right to divert water from streams in the lands so granted and to use the water so diverted.³¹

Percolation. In *Hurdman v. North E. Ry. Co.*,⁴ Cotton, L.J., points out that excavating and raising the minerals is considered the natural use of mineral land, and that the mine owner is exempt from liability for water which in consequence of his works flows by gravita-

¹² At p. 4.

¹³ As to what constitutes an act of God in the legal sense, see the judgment of Bramwell, B., in the Court below, (1875) L. R. 10 Ex. 258; *Nugent v. Smith*, (1875) 1 C. P. D. 34; and the judgment of Fry, J., in *Nitro-Phosphate Co. v. St. Katherine Dock Co.*, (1878) 9 Ch. Div. 515, whose view was assent-

ed to by Lord Coleridge, C.J., in *Dixon v. Metropolitan Board of Works*, (1881) 7 Q. B. D. 421.

¹⁴ R. S. O. (1897) c. 36, s. 69, s.-s. 10. See Chap. XIV. *infra*.

² (1877) 2 App. Cas. 786.

³ (1874) 19 Eq. 115.

³¹ *Remfry v. Surveyor-General of Natal*, (1896) A. C. 558.

⁴ (1878) 3 C. P. D. 174.

tion into an adjoining mine, if his works are carried on with skill and in the usual manner.

As observed by Lord Hatherley, L.C.,⁵ "The natural percolation of water from one mine to another is not a matter as to which the owner of the lower mine has any right of complaint against the owner of the other mine.

"The owner of the upper mine has a right to work it just as he likes, and his neighbour below can not complain unless he finds that the water has been turned into his mine by a channel or artificial arrangement."

In *West Cumberland Iron & Steel Co. v. Kenyon*,⁶ the facts were that, the defendants, the owners of a mining property sunk a shaft by which they tapped the water which had formerly found its way into certain old workings on their own ground, and it thence percolated into the plaintiff's mine. The defendants then made a bore hole at the bottom of the shaft. It was admitted that the making it was not in due course of mining, but only for the purpose of getting rid of the water. The effect of the bore hole was to let off the water into the above mentioned old workings on the defendants' ground, whence it percolated into the plaintiff's works in the same way as it would have done if neither shaft nor bore hole had ever been made.

It was held, reversing the decision of Fry, J., that the defendants had not by making the shaft so appropriated the water as to lay themselves under an obligation to keep it from going into the plaintiff's land, and that as the effect of the defendants' operations was not to throw upon the plaintiff's lands any burden which it had not borne before the plaintiff's case failed.⁷

In *Turner v. Mirfield*,¹¹ the defendant was restrained by a perpetual injunction from allowing noxious and offensive refuse water to flow from his manufactory into an old pit, from which it percolated into the plaintiff's colliery.

⁵ In *Phillips v. Homfray*, (1871) L. R. 6 Ch. 781.

⁶ (1879) L. R. 11 Chy. D. 782.

⁷ See also *Lomax v. Stott*, (1870) 39 L. J. N. S. Ch. 834; *Plant v. Stott*, (1869) 21 L. T. N. S. 106; *Clegg v. Dearden*, (1848) 12 Q. B. 576; *Crowther v. Elwell*, (1838) 4 M. & W. 71;

Jegon v. Vivian, (1871) L. R. 6 Ch. Ap. 742, at 759; see *Snow v. Whitehead*, (1884) 27 Ch. Div. 588. A case of the percolation into plaintiff's cellar, of water allowed to collect in the defendants cellar.

¹¹ (1865) 34 Beav. 390.

Railways. In *Bagnall v. London & N. W. Ry. Co.*,⁸ the railway company were held liable where they cut and removed upwards of twenty feet in thickness of the surface soil over the plaintiff's mine, and along their line to a lower district of country where a brook flowed. Water, part of which would have escaped but for a bridge built by the railway company, flowed down the railway, and in consequence of the high ground between the brook and the surface over the mine being removed by the defendants, reached that spot, and together with the water falling there and the springs arising in the cutting, penetrated into the plaintiff's mine for want of efficient drains.

This was affirmed in the Exchequer Chamber,⁹ where it was held that the conjoint effect of the making of the defendants' cutting and of their neglect to keep their drains in order had been that large quantities of water which but for the cutting would not have come near the plaintiff's mine, and but for the defective state of the drains would have passed away, poured down into the mine, and that the claim was not one which could have been enforced under the compensation clauses of the Railway Clauses Compensation Act, 1845.

Canals. As to the rights and liabilities as between the owners of a canal constructed under an Act of Parliament and the owners of the subjacent mines, see *Dunn v. Birmingham Canal Co.*¹⁰

In that case it was shown that water escaped from the canal and flooded plaintiff's mine for which the defendant's were held liable.

Damage. As to the liability of a mine owner who wrongfully works beyond his boundary into his neighbour's mine not only for the minerals so abstracted, but also for damages which result to the neighboring mine from water let in in consequence of such wrongful working, see *Clegg v. Dearden*.¹

In *Attorney-General v. Tomline*,² the owner of the foreshore was enjoined from removing the shingle therefrom so as to expose the plaintiff's adjoining land to the inroads of the sea.

Brett, L.J., pointed out at p. 65, that while *Hudson v. Tabor*,³ was binding authority that defendant was not bound to keep the sea out, yet he must not do an act which will let the sea in.

Easements. The right to the use of water rests on clear and settled principles. Every proprietor who claims a right either to

⁸ (1861) 7 H. & N. 423; as to diversion see *Arthur v. G. T. R.*, (1895) 22 A. R. 89.

⁹ (1862) 1 H. & C. 544.

¹⁰ (1872) L. R. 8 Q. B. 42.

¹ (1848) 12 Q. B. 576.

² (1880) 14 Ch. Div. 58.

³ (1877) 2 Q. B. D. 290.

throw the water back above, or to diminish the quantity of water which is to descend below must, in order to maintain his claim, either prove an actual grant or license from the proprietors affected by his operations, or must prove an uninterrupted enjoyment of twenty years, which term of twenty years is now adopted as affording conclusive presumption of a grant.³¹

The right of diverting water³² so as to diminish the flow lower down the stream, or of throwing back water on the lands of an upper riparian proprietor, or of pumping water from a mine and discharging it upon the land of another,³³ or of polluting water,³⁴ may, according to law, be created by grant,³⁵ or by long continued enjoyment, from which the existence of a former grant may be reasonably presumed,³⁶ or by the action of the Legislature.³⁷

³¹ Per Sir John Leach in *Wright v. Howard*, (1823) 1 Sim. & St. 203; see R. S. O. (1897) c. 133, ss. 34-42; *McLaren v. Cook*, (1847) 3 U. C. R. 299; see *Jones v. Fisher*, (1890) 17 S. C. R. 515.

³² *As to Ontario* see "The Mines Act," R. S. O. (1897) c. 36, s. 50, s.-s. 3; "An Act for protecting the public interest in Rivers, Streams and Creeks," *Ib.* chapter 142; "An Act respecting Water Privileges," *Ib.* chapter 141, as amended by 61 Vict. (1898) c. 8; "The Ditches and Watercourses Act," R. S. O. (1897) c. 285, and R. S. O. (1897) c. 138, s. 26, s.-s. 3; s. 28. *As to Quebec* see Civil Code, Article 503, as amended by R. S. P. Q. (1888) p. 573; see also *Ib.* p. 801. *As to British Columbia* see "The Water Clauses Consolidation Act," R. S. B. C. (1897) c. 190; see also *Martley v. Carson*, (1888) 20 S. C. R. 634; see C. P. R. v. *McBryan*, (1896) 5 B. C. R. 187. *As to The North-West Territories* see 56 Vict. (1892) (D) c. 15, s. 7, as to grants of water powers and privileges; 54-55 Vict. (D) (1892) c. 24, s. 14, as to the pollution of water; "The North-West Irrigation Act," 57-58 Vict. (1894) c. 30, as amended by 58-59 Vict. (1895) c. 33. For regulations made 29th April, 1895, under the principal Act, *vide Statutes of Canada*, (1895) p. xlvii. *As to diversion by a railway company* see *Arthur v. G. T. R. Co.* (1895) 22 A. R. 89.

³³ *Wright v. Williams*, (1836) 1 M. & W. 77.

³⁴ *Crossley v. Lightowler*, (1867) L. R. 2 Ch. 478; *Wright v. Williams* (*supra*).

³⁵ *Wright v. Howard*, (1823) 1 Sim. & St. 203. *As to implied grants of easements*, see *Hall v. Lund*, (1863) 1 H. & C. 676; *Broomfield v. Williams*, (1897) 1 Ch. 602, 611; *Ewart v. Cochrane*, (1861) 4 Macq. Sc. Ap. 117; *Israel v. Leith*, (1890) 20 O. R. 361; where the effect of the Ontario Registry Act was considered.

As to whether on the severance of a tenement by the owner, he can claim (as against his grantee) an easement by implied reservation, see *Suffield v. Brown*, (1863) 4 De G. J. & S. 135, a case of a non-apparent and discontinuous easement; *Crossley v. Lightowler*, (1867) L. R. 2 Ch. 478, and *Wheelodon v. Burrows*, (1879) 12 Ch. Div. 31, a case of a continuous and apparent easement.

In *Attrill v. Platt*, (1883) 10 S. C. R. 425, *Strong, J.*, refers to *Wheelodon v. Burrows* as having settled the law, as proceeding on the principle, that a grantor can not derogate from his own grant.

³⁶ R. S. O. (1897) c. 133.

³⁷ *Mason v. Shrewsbury*, (1871) L. R. 6 Q. B. 587; see note 32, p. 232.

In order that an easement may be acquired by prescription, the user must be continuous, uninterrupted and as of right.³⁸

Private easements can not be acquired by prescription in respect of public navigable waters to the detriment of the rights of the public.³⁹

The provisions of the English Prescription Act¹² as to water-courses, and the use of water, are substantially reproduced in Ontario.¹³

Upon the same principles as have already been sufficiently discussed in dealing with the law of support,⁴ the *prima facie* rights and liabilities in respect to water may be varied by agreement between the parties concerned.⁴¹

Air. The right to ventilate one mine through the property of another, referred to as an air leave, is a valuable privilege.

In *Powell v. Aiken*,⁵ access was ordered to be given to the plaintiffs to an air course to enable them to block it up, the air course having been made by the mortgagor of the defendant without the knowledge or consent of the plaintiffs.

An injunction was also granted restraining the defendants from using the air course.

In *Jegon v. Vivian*,⁶ the lessees of A colliery obtained a lease of the B colliery adjoining. The lessors were also the owners of the C colliery, during the continuance of the lease the defendants lawfully cut drifts and ways in the demised mine B, so that water and air passed, and after the determination of the lease continued to pass from the A colliery through the B colliery into the C colliery.

It was held that while the plaintiffs might build a wall as a barrier so as to deprive the defendants of all benefit from the passage of air and water, the defendants were not bound to build any such barrier, and that the plaintiffs had no right to recover for water-leave or air-leave.⁷

The rights as to air, are analogous to those in respect of underground water.

³⁸ *Hollins v. Verney*, (1884) 13 Q. B. D. 304; *Malcolm v. Hunter*, (1884) 6 O. R. 102, per Boyd, C.

³⁹ *London and Canadian Loan Co. v. Warin*, (1886) 14 S. C. R. 232.

¹² 2 and 3 W. IV. c. 71, cited in *Chitty's Statutes*, Vol. V., p. 399, as "Lord Tenterden's Act, 1832."

¹³ R. S. O. (1897) c. 133.

⁴ Chap. IX., *supra*.

⁴¹ See such cases as *Whitehead v. Parks*, (1858) 2 H. & N. 870; *Northam v. Hurley*, (1853) 1 E. & B. 665.

⁵ (1858) 4 K. & J. 357.

⁶ (1871) L. R. 6 Ch. 742.

⁷ In *Phillips v. Homfray*, (1871) L. R. 6 Ch. 781.

In *Webb v. Bird*,⁸ the Exchequer Chamber decided that a grant of a right to the free and uninterrupted passage of the currents of wind and air to the plaintiff's wind-mill could not be presumed from an uninterrupted user for twenty years.

In *Bass v. Gregory*,¹⁰ the plaintiff claimed to be entitled, as of right, to have the cellar of his public house ventilated by means of a hole or shaft cut therefrom through the rock into an old well in the defendant's yard. The cellar had been so ventilated for forty years at least without interruption with the knowledge of the occupiers of the yard.

It was held that a lost grant ought to be presumed, and that the plaintiff's right as claimed was a right recognized by law which the Court would protect by injunction, and for violation of which damages would be given.

In *Gale v. Abbott*,¹ and *Dent v. Auction Mart Co.*,² injunctions were granted to remove and prevent impediments to ventilation.³

⁸ (1863) 13 C. B. N. S. 841; followed in *Harris v. De Pinna*, (1886) 33 Ch. Div. 262; *The City of London Brewery Co. v. Tennant*, (1873) L. R. 9 Ch. 221; *Hall v. Lichfield Brewery Co.* (1880) 49 L. J. Ch. 655; *Bryant v. Lefevere* (1879) 4 C. P. D. 172; *Bamford v. Turnley*, (1862) 3 B. & S. 66; *St. Helen's Smelting Co. v. Tipping*,

(1865) 11 H. L. C. 642, an action for damages for injuries resulting from noxious vapours from Copper Smelting Works.

¹⁰ (1890) 25 Q. B. D. 481.

¹ (1862) 8 Jur. N. S. 987.

² (1866) L. R. 2 Eq. 238.

³ The respective Statutory provisions as to ventilation of mines are printed *infra*; see index.

CHAPTER XI.

MINERALS UNDER RAILWAYS AND HIGHWAYS.

A.—Railways.

While a railway company may acquire mines,¹ yet it may not work them as a part of its regular operations.²

In Ontario. "The Railway Act of Ontario"³ contains eight sections (21 to 28 inclusive), dealing with mines and minerals.⁴

21. The company shall not be entitled to any mines of iron, slate or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away, or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.⁴

¹ *Errington v. Met. R. Co.*, (1882) 19 Ch. D. 559.

² *Eccl. Comrs. v. N. E. R. Co.*, (1877) 4 Ch. D. 845, 855, 856; *Dixon v. Caledonian Co.*, (1880) 5 A. C. 833; *Glasgow v. Farie*, (1888) 13 A. C. 697.

³ R. S. O. (1897) c. 207.

⁴ R. S. O. (1887) c. 170, s. 21.

The group of sections from 77 to 85, inclusive of the English Railway Clauses Consolidation Act, 1845, are referred to by Esher, M.R., in *Gerard & London & N. W. Ry. Co.*, (1895) 11 T. L. R. 170, as a complete code of the law determining the mutual rights of the company and the

land-owner in respect of mines and minerals in certain instances.

The statute has created a specific law for such matters by which alone the rights of the company and the mine owner are regulated. After the decision in *Jenkins v. Central Ontario Ry. Co.*, (1883) 4 O. R. 593, where it was held that the Railway Co. could not be restrained from expropriating under R. S. O. (1877) c. 165, a valuable mine of magnetic iron ore as a site for their station, all these sections of the English Act, except section 82, were substantially introduced into Ontario by 47 Vict. c. 30, and are

22. If the owner, lessee, or occupier of any mines or minerals lying under the railway or any of the works connected therewith or within the prescribed distance, or, where no distance is prescribed, forty yards therefrom, be desirous of working the same, such owner,

now embodied in ss. 21 to 28, inclusive of the Railway Act of Ontario, R. S. O. (1897) c. 207.

The effect of the corresponding fasciculus of clauses in the English code was held in *G. W. R. v. Bennett*, (1867) L. R. 2 E. & I. App. 27, to be that a railway company purchasing under that statute does not become entitled to the mines under the land.

By the effect of the 77th, 78th and 79th sections of the Railway Clauses Consolidation Act, 1845, a railway company on purchasing, under that statute, land for the purposes of the railway does not become entitled to the mines under the land. The owner may work them, after notice duly given; and if after such notice the company, though desiring to prevent the working, does not give compensation for the minerals, the owner may work them up to and under the railway, working them in a proper manner and according to the usual manner of working such mines in the district. The company cannot under this statutory purchase claim the benefit of the right of an ordinary purchaser of the surface to subjacent and adjacent support.

In giving judgment Lord Westbury said, at p. 41: "Then what relation remains between the railway company and the mine owner? It is defined by the statute. Although the mines *in solido* are without any exception

reserved to the mine owner, he is not at liberty to win them or to proceed to get them without notice to the railway company. That notice expires after a month. During that month the railway company is under an obligation to ascertain whether it may be requisite for the support of the railway to purchase any of the subjacent minerals. If the company should not think it requisite the mine owner is left under no other obligation than that he is to win the mines in a proper manner; and if there is a custom of the country it must be done according to that custom; and the railway company is armed with authority to inspect the working from time to time, in order to ascertain whether any damage is likely to ensue, or whether any proceeding of the mine owner is inconsistent with the ordinary beneficial manner of winning the minerals. The relation therefore between the railway company and the mine owner is one so clearly defined, so useful to the railway company, and at the same time so fair and just to the mine owner, that one is astonished that any argument could have been raised upon the ordinary implication applicable to a grant which is so entirely excluded by the express enactment of the statute, and also by the accompanying provisions that define, beyond the possibility of mistake, the true relation which, after the land has been

lessee or occupier, shall give to the company notice in writing of his intention so to do thirty days before the commencement of working, and upon the receipt of the notice it shall be lawful for the company to cause the mines to be inspected by any person appointed by them for the purpose, and if the company show to the satisfaction of the Commissioner of Public Works that the working of the mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for the mines or any part thereof to the owner, lessee or occupier thereof, then he shall not work or get the same; and if the company and the owner, lessee or occupier do not agree as to the amount of the compensation the same shall be settled as in other cases of disputed compensation under this Act.²

conveyed to the railway company, continues to exist between the company and the mine owner."

In *Holliday v. Wakefield*, (1891) A. C. 81, the House of Lords compared the provisions of sections 77 to 85 of Railway Clauses Consolidation Act (1845) and the corresponding sections of the Waterworks Clauses Act, (1847) 10 & 11 V. (Imp.) c. 17.

Knowles v. Lancashire & Y. Ry. Co., (1889) 14 App. Cas. 248.

See also the *Chamber Colliery Co. v. The Company Proprietors of the Rochdale Canal*, (1895) Ap. Cas. 564.

New Moss Colliery Co. v. Manchester S. & L. Ry. Co., (1897) 1 Ch. 525.

Cromford Canal Co. v. Cutts, (1848) 5 Railway Cases, 442.

Dunn v. Birmingham Canal Co., (1872) L. R. 8 Q. B. 42.

Dudley Canal Co. v. Grazebrook, (1830) 1 B. and Ad. 59.

Midland Ry. Co. v. Haunchwood, (1882) 20 Ch. D. 552.

Glasgow v. Farie, (1888) 13 Ap. Cas. 657.

Midland Ry. Co. v. Robinson, (1889) 15 Ap. Cas. 19.

G. W. R. Co. v. Cefor Cribbwen B. Co., (1894) 2 Ch. 157; *A. G. v. Conduitt C. Co.*, (1895) 1 Q. B. 301; *Chamber C. Co. v. Rochdale*, (1894) 2 Q. B. 632; (1895) W. N. 122 (2); (1895) A. C. 564; *Queen v. L. & N. W. Co.*, (1894) 2 Q. B. 512.

"Coal," one of the minerals mentioned in the English Act, is omitted in the Ontario Act.

As to meaning of terms "mines" and "minerals," see chapter 2, *ante*.

² Section 22; *R. S. O.* (1887) c. 170, s. 22.

Re Neath & Brecon Ry. Co., (1876) 2 Ch. D. 201.

Bagnall v. London & N. W. Ry. Co., (1861) 7 H. & N. 423.

Under section 78 of the English Act, the company is made the judge of what is likely to damage the works of the railway.

In *Smith v. Directors Great Western Railway Co.*, (1877) 3 Ap. Cas. 165, H. L., Lord Cairns, L.C., said, at p. 179: "It appears to me that what is intended by the

23. If before the expiration of such thirty days the company do not state their willingness to treat with the owner, lessee, or occupier for the payment of the compensation, it shall be lawful for him to work the said mines or any part thereof for which the company have not agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same are situate, and if any damage or obstruction be occasioned to the railway or works by improper working of the mines, the same shall be forthwith repaired or removed, as the case may require, and the damage made good by the owner, lessee, or occupier of the mines or minerals, and at his own expense; and if the repair or removal be not forthwith done, or if the company think fit without waiting for the same to be done by the owner, lessee, or occupier, it shall be lawful for the company to execute the

Legislature with regard to mines under a railway is this: The railway company is to be under no obligation to compensate any person until there is some one who has a right to work and who is prepared to work the mines. When that person gives the notice of his intention to work the mines, the directors are to come to an agreement or settlement with that person according to what his rights may be." See *Dixon v. Caledon, etc., Ry. Co.*, (1879) 5 A. C. 820.

In *Queen v. McCurdy*, (1891) 2 Ex. Ct. R. 311, a case under the Expropriation Act, R. S. C. c. 39, s. 6, *Burbidge, J.*, decided that the claimant was not obliged to prove by costly tests or experiments the mineral contents of his land, and that the compensation must be determined from the indications and probabilities disclosed by the evidence.

Brown v. Commissioner for

Railways, (1890) 15 Ap. Cas. 240, a decision of the Privy Council reversing the Supreme Court of New South Wales.

As to the division of the compensation for minerals between successive tenants for life and remainderman, see *In re Barrington Gamlen v. Lyon*, (1886) 33 Ch. D. 523, and *Re Robinson's Settlement Trusts*, (1891) 3 Ch. 129.

In *Ruabon Brick and Terra Cotta Co. v. G. W. Ry. Co.*, (1893) 1 Ch. 427, the Court of Appeal held that section 79 of the English Act gave the power to the mineral owner to disturb in order to get at minerals which are worked from the surface, if that is the usual and ordinary way of working them in the district.

Lindley, L.J., pointed out that this involved the consequence that the mineral owner might derogate from his own grant, and that the result might be the destruction of the railway.

same and recover from the owner, lessee, or occupier the expense occasioned thereby by action in any Court of competent jurisdiction.³

24. If the working of such mines under the railway or works or within the above mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain and work their said mines, but no such airway, headway, gateway, or water level shall be cut or made without first procuring the consent in writing of the Commissioner of Public Works of the Province, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.⁴

25. The company shall, from time to time, pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses incurred by the owner, lessee or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company, which cannot be obtained by reason of making and maintaining the railway, and if any dispute or question arises between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration under this Act.⁵

³ Section 23; R. S. O. (1887) c. 170, s. 23.

Midland Ry. Co. v. Miles, (1885) (1867) L. R. 4 Eq. 19.

Pountney v. Clayton, (1883) 11 Q. B. D. 820.

See Midland Ry. Co. v. Miles, (1886) 33 Ch. D. 632.

Dudley Canal Navigation Co. v. Grazebrook, (1830) 1 B. & A. 59.

Attorney-General v. Conduit Colliery Co., (1895) 1 Q. B. 301.

⁴ Section 24; R. S. O. (1887) c. 170, s. 24.

See Midland Ry. Co. v. Miles, (1886) 33 Ch. D. 632.

Section 80 of the English Act does not require any such consent.

⁵ Section 25; R. S. O. (1887) c. 170, s. 25.

Whitehouse v. The Wolverhampton Ry. Co., (1869) L. R. 5 Exch. 6.

Midland Ry. Co. v. Miles, (1885) 30 Ch. D. 634.

26. For better ascertaining whether any such mines are being worked, or have been worked, so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing to enter upon any lands through or near which the railway passes wherein any such mines are being worked, or are so supposed to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked, or about so to be.⁶

27. If the owner, lessee, or occupier of any such mine refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall, for every such refusal, forfeit to the company a sum not exceeding \$100.⁷

28. If it appear that any such mines have been worked contrary to the provisions of the preceding seven sections, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway and preventing injury thereto; and if, after such notice, such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works and recover the expenses thereof from the owner, lessee, or occupier by action in any Court of competent jurisdiction.⁸

Quebec. Articles 5125 to 5223 of the Revised Statutes of Quebec, 1888, make no special provision as to mines under railways.

In construing an agreement by which lands are conveyed by a private owner to a railway company for the construction of their road, the mining rights will not be presumed to be reserved from the fact that the company cannot work a mine. Although the company cannot work mines, this not being within its statutory powers, it can acquire them and alienate them.⁹

New Brunswick. "The New Brunswick Railway Act,"¹⁰ makes no special provision as to mines under railways.

⁶ Section 26; R. S. O. (1887) c. 170, s. 26.

⁷ Section 27; R. S. O. (1887) c. 170, s. 27.

⁸ Section 28; R. S. O. (1887) c. 170, s. 28.

⁹ *Turriff v. Quebec Central*, (1893) R. J. Q. 2 Q. B. 559.

¹⁰ 54 Vict. (1891) c. 18.

Nova Scotia. "The Nova Scotia Railway Act,"⁹ defines land as including all real estate, messuages, lands, tenements and hereditaments of any tenure, and makes no special provision as to mines or minerals.

British Columbia. Sections 21 to 28, inclusive, of "The British Columbia Railway Act,"¹⁰ are substantially reproduced from sections 21 to 28 of the Railway Act of Ontario, printed in full *supra*. The Minister mentioned in sections 22 and 24 being, in British Columbia, the Chief Commissioner of Lands and Works, and section 26 of the British Columbia Act provides that reasonable compensation be given to the mine owners for any detention or damage which may be caused by the examination thereby permitted.

Canada. Under "The Railway Act of Canada,"¹⁰ no company shall, without the authority of the Railway Committee, locate the line of its proposed railway or of any branch thereof, so as to obstruct or interfere with or injuriously affect the working of, or the access or adit to any mine then open or for opening, which preparations are at the time of such location being lawfully and openly made.

By section 2, s.-s. (a), the expression "company" is defined to mean a railway company, and includes any person having authority to construct or operate a railway.¹

B.—Highways.

In Ontario "The Municipal Act"¹¹ defines the powers of county and township councils in relation to roads, as follows:

The corporation of any township or county wherever minerals are found, may sell or lease, by public auction or otherwise, the right to take minerals found upon or under any roads over which the township or county has jurisdiction, if considered expedient so to do.²

⁹ C. 53 of R. S. N. S., 5th series.

(1866) 1 L. R. C. P. 564; Elliot v.

¹⁰ R. S. B. C. (1897) c. 163, ss. 21-28.

N. E. Ry. Co., (1863) 10 H. L. C. 333; London & N. W. Ry. Co. v.

¹⁰ 51 Vict. (Dom.) c. 29, s. 119.

Evans, (1893) 1 Ch. 16.

¹ As to lateral support of railways, see Smith v. Thackerah,

¹¹ R. S. O. (1897) c. 223 (Div. IV.).

² *Ib.*, s. 657, s.-s. 1.

No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road for at least one month previous to the time fixed for considering the by-law.³

The deed of conveyance or lease to the purchaser or lessee under the by-law, shall contain a proviso protecting the road for public travel, and preventing any uses of the granted rights which would interfere with the public travel.⁴

In *Ontario Natural Gas Co. v. Gosfield*,⁵ natural gas was held to be a mineral within the meaning of this section.

³ *Ib.*, s.-s. 2.

⁵ (1891) 18 A. R. 625.

⁴ *Ib.*, s.-s. 3.

CHAPTER XII.

TAXATION.

In Ontario, the law regarding the taxation of mines and minerals is contained in "The Assessment Act,"¹ as follows:

"Land," "real property," and "real estate," respectively, shall include all buildings or other things erected upon or affixed to the land, and all machinery or other things, so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and land covered with water, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty.²

Property Liable to Taxation. All municipal, local or direct taxes or rates, shall, where no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the municipality or other locality, according to the assessed value of such property, and not upon any one or more kinds of property in particular, or in different proportions.³

All property in this Province shall be liable to taxation, subject to the exemptions mentioned in the Act.⁴

Mineral Lands. Except in the case of mineral lands hereinafter provided for, real and personal property shall be estimated at their cash value, as they would be appraised in payment of a just debt from a solvent debtor.⁵

In estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but

¹ R. S. O., 1897, c. 224.

² Section 2, sub-section 9.

³ *Ib.*, s. 6: As to personal property, see *Kingston v. Canada Life*

Assurance Co., (1890) 19 O. R. 453.

⁴ Section 7.

⁵ Section 23, s.-s. (1).

the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act.⁸

The meaning of the word "income" was considered by the Privy Council in *Lawless v. Sullivan*,⁹ an appeal from the Supreme Court of Canada, affirming a judgment of the Supreme Court of New Brunswick upon a special case under a New Brunswick Act,¹⁰ whereby a tax was made leviable upon "income." The judgment of their Lordships was delivered by Sir Montague E. Smith, who said: ¹⁰ "The Courts in Canada have in effect decided that 'income' means all the items of profit on the transaction of a business during the fiscal year, without regard to any losses arising from the same business during that year. Their Lordships cannot think that this is a sound or reasonable construction of the enactment. . . . It must always be borne in mind that the tax is imposed on the income received during the fiscal year, and what, therefore, has to be ascertained for the purpose of assessment is the income for an entire year. . . . The intention of the Legislature should be very clearly shown to justify an interpretation of the word 'income,' which would require that, in the account for the year, the items of profit only should be included, and the losses excluded, although, but for the operations which occasioned the losses, the apparent profits could not have been made . . . Their Lordships have come to the conclusion, upon consideration of the Act in question, that there is nothing in the enactment imposing the tax, nor in the context, which should induce them to construe the word 'income,' when applied to the income of a commercial business for a year, otherwise than in its natural and commonly accepted sense, as the balance of gain over loss, and consequently they are of opinion that where no such gain has been made in the fiscal year, there is no income or fund which is capable of being assessed."¹

In *The Corporation of the City of Kingston v. The Canada Life Assurance Co.*,² Boyd, C., in delivering the judgment of the Chancery Division, referring to *Lawless v. Sullivan*,³ said: ⁴ "The judg-

⁸ S. 28, s.-s. (2).

⁹ (1881) 6 App. Cas. 373.

¹⁰ 31 Vict. c. 36, s. 4.

¹⁰ At p. 378.

¹ See *Forder v. Handyside*, (1876)

1 Ex. D. 233; *The Queen v. The Commissioners of the Port of*

Southampton, (1870) L. R. 4 H. L. 472, 484; *Gilbertson v. Ferguson*, (1879) 5 Ex. D. 57.

² (1890) 19 O. R. 453.

³ *Supra*.

⁴ At p. 458.

ment, then, is definitely and conclusively upon this point, that 'income,' as commercially used, means the balance of gain over loss in the fiscal year or other period of computation."⁵

In computing the "balance of gain over loss" and for that purpose arriving at the working expenses, there is not much room for dispute as to the repairs and renewals of the fixed plant and buildings, but there are other expenditures more difficult to decide. There appears to be no reason why insurance, for instance, should apply only to the risks of ordinary accidents by fire. There are beyond these the risks of explosion and flooding. Why should not an annual sum be set aside to provide against these risks. In *Reg. v. Wells*⁶ it was said: "There seems also no distinction in principle between a sum annually laid by to make good, when it shall become necessary, an inevitable loss by the destructive agency of time, and a fund laid by for an indemnity against a loss by fire, or storm, or other peril insured against."

An annual tax of one cent per acre to and for the public uses of the Province of Ontario has been imposed⁷ on all lands granted, or hereafter to be granted by the Crown, situate in the Territorial Districts of Algoma, Manitoulin, Thunder Bay or Rainy River, and, in addition,⁸ a further tax of one cent per acre upon all unoccupied lands embraced in any school section formed under the authority of section 41 of the Public School Act.⁹ When any portion of such taxes has been due for three years, the Treasurer of the Province may sell the land for the arrears of taxes then due thereon with costs.

In Quebec. The Quebec Municipal Code provides¹⁰ that all lands or real estate situated in a local municipality, with certain exceptions,¹ are taxable property.²

Crown lands occupied, whether under or without location tickets, are deemed to be taxable property; but the municipal taxes

⁵ See *London Mutual Ins. Co. v. City of London*, (1887) 15 A. R. 636; *Russell v. Town and County Bank*, (1888) 13 App. Cas. 421, 429.

⁶ (1867) L. R. 2 Q. B. 542.

⁷ By section 1 of R. S. O., 1897, c. 26.

⁸ By section 2.

⁹ R. S. O., 1897, c. 292, s. 24.

¹⁰ Art. 709.

¹ Mentioned in Article 712.

² None of the exemptions include mining property.

for which they are liable cannot, in any case, be recovered from the Crown.³

All municipal taxes imposed on taxable property for local or county purposes must be fairly apportioned according to the valuation roll in force, on all property subject to the payment of such taxes in proportion to its taxable value.⁴

All municipal taxes are regarded as privileged debts exempt from the formality of registration.⁵

Mining rights are exempt from municipal taxation.

In making the valuation of taxable mining lands in a municipality, in which there exists an immovable property, containing a mine which is being worked, the valuers shall, up to the 24th July, 1900, value such immovable, without taking into consideration the increased value arising from the existence of such mine and minerals, ores, pits, shafts, excavations, tunnels, mills, machines and other buildings, structures and dependencies used or to be used exclusively for the working of such mine.⁵¹

In New Brunswick real and personal property is rated at its full cash value in the same manner as if it were to be appraised as belonging to the estate of a deceased person, subject, however, in the case of personal property, to a reduction for indebtedness.⁶

The municipal council of any county in the Province of New Brunswick is authorized and empowered⁷ at a general meeting, or at a special meeting to be called, as in the Act provided, to exempt in whole or in part from taxation, all the plant, machinery, works, buildings or improvements which may be used or erected for or in connection with the developing or operating of mines or minerals within the county, for such period, not exceeding twenty years, as the council may determine, and thereupon all such plant, machinery, works, buildings and improvements, shall be so exempt from taxation for the period determined upon.

³ Art. 714.

⁴ Art. 942.

⁵ Art. 946.

⁵¹ Section 1579 of the Quebec Mining Law (*infra*); see *Stevenson v. Wallingford*, R. J. Q. 6 C. S. 183;

see note to Article 1424, Chapter XV., *infra*.

⁶ Consol. Statutes of N. B., 1877, c. 100, s. 4. As to meaning of "income" see *Lawless v. Sullivan* (*supra*).

⁷ By Act of 1893, c. 11, s. 1.

In Nova Scotia one-fourth, and no more, of all local and direct taxes shall be raised by poll tax, and the other three-fourths shall be levied and assessed upon the whole taxable real and personal property of the locality to be taxed in proportion to the assessed value thereof, and not upon any one or more kinds or species of property in particular.⁹ Power is given the council of any municipality to direct the whole amount of taxes to be levied and assessed upon real and personal estate.

In British Columbia the law was consolidated by "The Assessment Act."¹⁰ The term "mine" is defined¹ to mean and include any land in which any vein or lode, or rock in place, shall be mined for gold or other minerals, precious or base, except coal, and any natural stratum or bed of earth, gravel or cement mined for gold or other precious minerals;² and the term "mineral" is defined³ to mean all valuable deposits of gold, silver, platinum, iridium, or any of the platinum group of metals, mercury, lead, copper, iron, tin, zinc, nickel, aluminum, antimony, arsenic, barium, bismuth, boron, bromine, cadmium, chromium, cobalt, iodine, magnesium, manganese, molybdenum, phosphorus, plumbago, potassium, sodium, strontium, sulphur, or any combination of the aforementioned elements with themselves or with any other elements: asbestos, emery, mica, and mineral pigments.⁴

9. Mines and minerals shall, for the purposes of taxation, be regarded as a separate class of property, and the assessment and taxation thereof shall be regulated by the provisions of the portion of this Act included under the above heading of "Taxation of Mines and Minerals."⁵

10. There shall be assessed, levied, and collected from every person owning, managing, leasing, or working a mine, and paid to Her Majesty, her heirs and successors, the sums following, that is to say:—

One per cent. on the assessed value of all ore or mineral-bearing substances raised, gotten, or gained from any lands in the Province, the assessed value to be based on the market price of the ore or mineral-bearing substances at the mine, as determined in case of dispute by smelter, reduction, or refinery works or other satisfactory

⁹ R. S. of N. S., 5th series, c. 58, s. 6.

¹⁰ R. S. B. C. (1897) c. 179.

¹ By s. 2, s.-s. 6.

² 1896, c. 46, s. 5; 1896, c. 34, s. 2; 1891, c. 26, s. 2.

³ By s. 2, s.-s. 7.

⁴ 1896, c. 46, s. 5; 1896, c. 34, s. 2.

⁵ 1896, c. 46, s. 6.

returns, as the case may be; provided, that no ore or mineral-bearing substances shall be taxed which are not sold or removed from the mining premises.⁷

11. It shall be the duty of the owner or manager of every mine, whether the same be a mineral claim, placer claim, mining leasehold, or other mining property, from which ore, minerals or mineral-bearing substances are being raised, gotten, gained, extracted or produced, at the date of the passing of this Act, or are hereafter raised, gotten, gained, extracted or produced, forthwith to notify the assessor of the district of the fact that any such mine mentioned above is in active production, and from time to time to furnish the name and address of the manager or person to whom notices hereunder may be addressed, and thereafter all notices required hereby may be given by letter directed to such address; and the assessor shall forthwith, from information received therefrom, or from other sources, prepare a list or roll showing all producing mines in his district.⁸

12. It shall be unlawful for any person to ship, send, take, or carry away, or permit so to be shipped, taken, or carried away from the mining premises wherefrom the same may have been raised, gotten or gained, any ore, minerals, or mineral-bearing substances raised, gotten, or gained after the passing of this Act, until the preceding section has been complied with.⁹

13. The tax levied by section 10 hereof shall be due and payable on the first day of each quarter, or of such other period as the Lieutenant-Governor in Council may by regulation determine, which periods may vary in different districts, or for differently situated or different classes of mines, upon the output of the preceding quarter or other period. The quarter shall end upon the last day of the months of March, June, September and December in each year.¹⁰

14. The owner or manager of every mine liable to pay the tax imposed hereby shall, in addition to any other returns which may be required under the provisions of this Act, and amendments, transmit within seven days from the end of any quarter or period, as the case may be, to the assessor for the district in which the mine is situated a return showing:

(1) The amount of ore, minerals or mineral-bearing substances shipped or sent from or treated on the mining premises pre-

⁷ 1896, c. 46, s. 8.

⁸ 1896, c. 46, s. 9.

⁹ 1896, c. 46, s. 10.

¹⁰ 1896, c. 46, s. 11.

vious to the preceding quarter or period, in respect of which returns had not theretofore been received and reported to the assessor.

(2) The amount of ore, minerals, or mineral-bearing substances shipped or sent from or treated on the mining premises during the preceding quarter or period.⁷

(3) The amount in respect of which returns were received during such preceding quarter or period, with the value according to such returns.

(4) The amount of tax payable.⁸

15. The sum payable in accordance with such returns shall be paid to the assessor forthwith, either by remittance accompanying the return, or personally at his office.⁹

16. In case the assessor is not satisfied with the correctness of the return as to quantity or value, or otherwise, he may assess the output for such sum as he deems proper, and enter the same on the roll, and shall, within ten days from such entry, notify the manager or other proper person of the sum at which the same is assessed; such notice may state the date upon which any objection to the assessment will be heard in the Court of Revision and Appeal, which date shall be not less than twenty-one days from the date of the notice.¹⁰

17. For the purpose of determining the quantity and value of ore, minerals, or mineral-bearing substances for which any person is assessable, and either before the receipt of a return or after such receipt, it shall be lawful for the assessor to enter upon any mining premises, from time to time, for the purpose of ascertaining the quantity of ore, minerals, or mineral-bearing substances raised, gotten, or gained from the said premises, and for this purpose the assessor may descend all pits and shafts, and use all tackle, machinery, appliances and things belonging to the mine as he shall deem necessary or expedient, and he shall have free ingress and egress to, out, and over all buildings, erections and vessels used in connection with the workings; and he shall from time to time be allowed to take from the said mining premises such samples or specimens as he may desire for the purpose of determining, by assay or otherwise, the value of the ore, minerals, or mineral-bearing substances being raised, gotten, or gained therefrom;

And every person liable to pay the tax imposed hereby shall keep upon the mining premises proper books of account of the ore,

⁷ Section 12 (2).

⁸ 1896, c. 46, s. 12.

⁹ 1896, c. 46, s. 13.

¹⁰ 1896, c. 46, s. 14.

minerals, or mineral-bearing substances raised, gotten, or gained, from the said mining premises, containing all particulars of weight and value, showing the smelter or reduction works, or other returns, or the amounts derived from the sale of such ore, minerals, or mineral-bearing substances, and other facts and circumstances necessary or proper for ascertaining the amount of the tax payable hereunder. And no ore, minerals, or mineral-bearing substances raised, gotten or gained out of any mining premises shall be removed therefrom until the weight and value thereof shall have been correctly ascertained and entered in said books of account, to which books of account and to the returns above mentioned, the assessor shall have full and complete access for the purpose of examining the same, and taking copies thereof or extracts therefrom.⁶

18. In case the party assessed objects to the amount of the assessment, he shall be entitled to have the objection heard before the Court of Revision and Appeal, which Court shall have power to sit from time to time to hear and determine such objections, and to deal with the amount of such assessment. Notice in writing of any such objections must be given by the person making the same to the assessor within fourteen days from the date of the assessor's notice, and in case the date of the sittings of the Court of Revision and Appeal was not stated in the assessor's notice, ten days' notice of such date shall be given.⁷

19. Nothing herein contained shall affect the validity or collection of the tax imposed by section 163 of the "Mineral Act (1896)."⁸

20. The tax imposed shall constitute a lien in favour of the Crown, not only upon the output upon which the same is levied, but also upon the mine and mining premises wherefrom the same was extracted, and upon all ore, minerals, or mineral-producing substances extracted therefrom which may be on the premises. The assessor shall have all the like powers for collection by distress or by sale of the mining premises as are conferred by this Act for the recovery of taxes, either upon real or personal property, and such powers may be exercised cumulatively.⁹

21. Any person failing to transmit the returns or to furnish the information required by this Act, shall be liable to the same penalties as are imposed for failure to comply with any provisions thereof, or with the requirements of an assessor.¹⁰

⁶ 1896, c. 46, s. 15.

⁷ 1896, c. 46, s. 16.

⁸ 1896, c. 46, s. 17.

⁹ 1896, c. 46, s. 18.

¹⁰ 1896, c. 46, s. 20.

By the "Speedy Incorporation of Towns Act, 1897,"⁵ the taxation of land within the municipality, whereunder lie mines or minerals, a title to which has been duly acquired under the mining laws of the Province, shall be governed as follows:—

No municipal taxes shall be chargeable upon minerals contained in a mine, or upon the workings of a mine, or upon so much of the land covered by a mineral claim or mine as is used directly in connection with such workings, or upon any improvements erected or made upon such lands as are so made for the purpose of working the mine, and which are put to such use, and to no other or extraneous use.⁶ Where the fee simple in any land has been divested from the Crown, either by a separate grant of the surface or by a grant of the minerals which, by the law in force at the time of the issue thereof, included a grant of the surface, the lands shall be taxable at their value as real estate, except such portions as are occupied by the workings of the mine, or used directly in connection with such workings, or occupied by improvements made and used for the purpose of working the mine.⁷ Where the land—

- (1) Is still vested in the Crown, but is included within a mineral claim for which no Crown grant has been issued; or,
- (2) Has been patented under a Crown grant issued under the mining laws;

and under either of such titles the owner is entitled to "the surface rights, so long as he holds the said claim or mine for the purpose of developing the mineral contained therein, but no longer," the said lands shall, subject to clause (d), be exempt from municipal taxation.⁸

Where any of the lands mentioned in clause (c) are occupied otherwise than by the workings of the mine, or put to a use not directly in connection with such workings, or occupied otherwise than by improvements made and used for the purpose of working the mine, then so much of said lands as are so occupied and used shall be subject to taxation to the same extent as if the same were held in fee simple by the occupant.⁹

Income liable to taxation *eo nomine*,¹⁰ means net income.¹

⁵ B. C. Stats., 1897, s. 16; not consolidated in R. S. B. C. 1897.

⁶ Section 15 (a).

⁷ Section 15 (b).

⁸ Section 15 (c).

⁹ Section 15 (d).

¹⁰ By the Assessment Act, C. S.

B. C., 1888, c. 111, s. 3.

¹ Re Marquis of Biddle, Cope, etc., (1897) 5 B. C. R. 37; see *Lawless v. Sullivan*, (1881) 6 App. Cas. 373; *Kingston v. Canada Life Assurance Co.*, (1890) 19 Ont. R. 453.

In Manitoba. The Act respecting Municipalities² contains no special provisions as to the taxation of mines or minerals.

In The Northwest Territories all land and personal property and income shall be liable to taxation, except certain specified exemptions.³

All municipal, local or direct taxes or rates shall, where no express provision has been made in this respect, be levied upon the whole ratable property, real and personal, of the municipality, according to the assessed value of such property, and not upon any one or more kinds of property in particular, or in different proportions.⁴

The largest item in the municipal taxes is usually the school tax.

"Land" is declared to include lands, tenements and hereditaments, or all rights thereto or interest therein, and would therefore include mines.⁵

² 1881, c. 3.

³ The Municipal Ordinance (c. 8 of the Revised Ordinances of 1888, s. 85).

⁴ *Ib.*, section 84.

⁵ *Midland Ry. Co. v. Haunchwood B. & T. Co.*, (1882) 20 Ch. D. 552, per Jessel, M.R., 568.

CHAPTER XIII.

WRONGFUL ABSTRACTION AND CRIMINAL OFFENCES.

There is a distinction between the possession of mines and the possession of other property. ¹ It has been decided that there may be sufficient possession of mines to enable the holder to bring trespass against wrongdoers. Many of the distinctions in the cases arise from the fact that while the right of working a mine is an incorporeal hereditament the mine is a corporeal hereditament of which it is possible to be in possession so as to acquire a good title by virtue of the Statute of Limitations.

Where there has been a wrongful abstraction of minerals, the question which most frequently arises is as to the method according to which the damages for such wrongful abstraction are assessed. In estimating such damages, in all cases, an allowance is made for the cost of bringing the mineral to bank; ² but only in certain cases, referred to by Lord Blackburn ³ as cases of innocent wrongdoing, is an allowance made for the cost of severing or getting the mineral.

The milder rule was applied in *Hilton v. Woods*,⁴ where Malins, V.-C., held that the taking of the coal there in question was inadvertent, and in *United Merthyr Collieries Co.*,⁵ a case of mistake. So in *Jegon v. Vivian* ⁶ and *Ashton v. Stock*,⁷ where the defendants acted under a *bona fide* belief of title, and in *Wood v. Morewood*,⁸ where the jury found that defendant was not guilty of fraud or negligence, but acted fairly and honestly.

¹ *Low Moor Co. v. Stanley*, (1876) 34 L. T. N. S. 186, Court of Appeal.

² *Joicey v. Dickinson*, (1881) 45 L. T. N. S. 643. The cases are reviewed by Lord Macnaghten in *Peruvian Guano Co. v. Dreyfus Bros.*, (1892) A. C. 175.

³ In *Livingston v. Rawyards Coal Co.*, (1880) 5 App. Cas. p. 40.

⁴ (1867) L. R. 4 Eq. 432.

⁵ (1872) L. R. 15 Eq. 46.

⁶ (1871) L. R. 6 Ch. 742.

⁷ (1877) 6 Ch. Div. 719.

⁸ (1842) 3 Q. B. 440.

In *Livingston v. Rawyards Coal Co.*,⁹ A. was the owner of a small feu of about an acre and a half in extent. The surface of the ground was occupied by miners' cottages and underneath was coal. When A. purchased the feu, he was under the impression that all the minerals under the feu, as under all ground surrounding it, had been reserved to the superior, but that was a mistake, for in the deed granting the feu there was no reservation of coal. The superior granted the whole of the property in the coal in all the surrounding land to R. and C. They, under the impression that they had the whole of the coal, including the coal under the acre and a half, worked out and disposed of the coal under A.'s acre and a half, and in doing so damaged the surface.

A. could not have worked the coal to a profit himself. There was no person to whom he could dispose of it but to R. and C., and the element of wilful trespass and the element of special and exceptional need of support to the surface were absent. In a claim by A. for (1) the value of the coal; (2) a sum for way-leave and the advantage obtained by working through instead of round the feu, and (3) for damages done to the houses on the surface, the House of Lords affirmed the decision of the Court below that the value of the coal taken must be the value of the coal to the person from whom it is taken at the time it is taken, and that the best evidence in the peculiar circumstances of the case of that value was the royalty paid by R. and C. for the surrounding coal field. Therefore, A. was entitled to the royalty on the coal excavated, calculated at that rate, together with the payment of a sum for damage done to the houses on the surface.

Lord Hatherley said: ¹⁰This case is certainly a very peculiar one, and without withdrawing from any of the principles which I find in the case of *Jegon v. Vivian* to be established by the prior authorities, I think this case may be disposed of in entire consistency with those principles. There is no doubt that if a man furtively and in bad faith robs his neighbour of property, and, because it is underground, is probably not for some time detected, the Court of Equity will assert its authority to punish fraud by fixing the person with the value of the whole of the property which he has so furtively taken, and may make no allowance in respect of what he has so done, etc. . . . The Court have already made a wide distinction between that which has been done by the common error of both parties and that which has been done by fraud.

⁹ (1880) 5 App. Cas. 25.

¹⁰ At p. 33.

Trotter v. Maclean¹ was a case in which the owner of a mine commenced to work from his own mine into an adjoining mine vested in trustees, in the *bona fide* belief that he was about to obtain from them a contract authorizing him so to work, and gave to one of the trustees notice that he was about to commence working.

It was held that the working, though no contract was afterwards entered into and the trustees had no power to make one, ought to be treated on the same footing as if it had been commenced inadvertently, and in taking an account of the minerals gotten without authority, the defendant was allowed the cost of severing them as well as the cost of bringing them to bank; but from the time that notice was given to the defendant that no contract would be made with him authorizing him to work, his working was treated as fraudulent, and he was allowed only the cost of bringing the minerals to bank, and that so long as a wrongful working is to be treated as inadvertent, the Statute of Limitations applies, and the account will only be directed for six years from the issue of the writ, but the onus is on the defendant to show that the minerals gotten by him were gotten before the six years.

In Llynvi Co. v. Brogden,² a mine owner, who passed his boundary and took coal from his neighbour's mine, was held liable to account for the value of the coals at the pit's mouth with just allowances for the cost of raising, but not of getting or severing.

Sir James Bacon, V.-C., said:³ The principles upon which an account is directed in cases like the present have been not unfrequently considered in Courts of Law as well as in Courts of Equity, and are established by authority. In Martin v. Porter,⁴ which was referred to in the course of the argument, by the unanimous judgment of the Court of Exchequer, it was decided that the coals which had been severed by the defendant were chattels belonging to the plaintiff, and that the defendant was liable to pay the amount of their value, without any allowance for the expense of severing them, such severance being a wrongful act for which the defendant could not claim to be reimbursed. . . . In Morgan v. Powell,⁵ the defendant was allowed the cost incurred by him in bringing the coals to the pit's mouth on the express ground that such cost must have been incurred by the plaintiff for the same purpose.

¹ (1879) 13 Chy. D. 574.

² (1870) L. R. 11 Eq. 188.

³ At p. 190.

⁴ (1839) 5 M. & W. 351; followed in Wild v. Holt, (1842) 9 M. & W. 672.

⁵ (1842) 3 Q. B. 278.

So in *Phillips v. Homfray*,⁶ the defendant was held liable for the value of minerals gotten or removed, with just allowances for carriage, but none for getting.

In *Taylor v. Mostyn*,⁷ the plaintiffs were mortgagees in possession of a colliery, and were also treated by the Court as lessees of the same colliery under a lease for a fixed term of years at a rent and at a certain royalty for all coal gotten. The lease contained covenants to leave pillars of coal to support the roof, and not to work or remove the pillars. The mortgagees underlet the colliery, and gave their sub-lessees permission to work and remove the pillars, which they did. It was held that in taking the accounts as against the mortgagees in possession, the mortgagees having allowed their sub-lessees to take the coal, must be treated as having taken it themselves; and having so taken wrongfully, in breach of the covenants in the lease, must be charged, not with the amount of the royalty reserved, but with the full value of the coal, subject to deduction for the cost of bringing it to the surface, but not for the cost of severance, and the foreclosure, which had been made absolute before the appeal was heard, was re-opened.

Cotton, L.J., said:⁸ Perhaps I ought to mention one case, and merely to say that, in my opinion, we are not bound by it. I mean the case which was referred to in the House of Lords, of *Livingstone v. Rawyards Coal Co.*⁹ That was a Scotch case, and it was a very peculiar one, because there the party claiming damages for the wrongful taking of the minerals was the owner of a little bit of coal, which by itself could never have been worked, being situated in the midst of other mines, and quite surrounded by them, having no shaft in it. Therefore it could not be worked, and the owner was in this position, that if his neighbour had not taken it, he never could have got for that coal, or for a license to work that coal, more than the House of Lords gave him, which was not the value of the coal when severed from the mine, but only the royalty, which his own witness said he could have got for the coal."

Fry, L.J., said:¹⁰ "It was a wrongful act on their part to grant the authority, and they must be responsible for the value of the coal so extracted, subject, of course, to the usual deduction for the cost of bringing it to the surface, but not for the cost of severance."

⁶ (1890) 44 Ch. Div. 694.

⁷ (1886) 33 Ch. D. 226.

⁸ At p. 233.

⁹ 5 App. Cas. 25.

¹⁰ At page 234.

Cotton, L.J.,¹ said: "In my opinion, if the mortgagees by any act of theirs seriously damaged the property in mortgage, those mortgagees in possession are answerable in this sense, that they must be charged with any damage or loss to the property which has been caused by their improper conduct, that is to say, by their wilful default."

The wrongful abstraction of minerals is an act of destruction which the Court will restrain by injunction.¹¹

Statute of Limitations. In *Ecclesiastical Commissioners for England v. The North Eastern Ry. Co.*,² the plaintiffs, who were owners of a coal mine, claimed damage against the owners of an adjoining mine for having broken their barriers and worked their coal. The wrongful acts were committed in 1863, while the adjoining mine was being worked by the Hartlepool Railway Company. The boundaries of the two mines were settled by mutual agreement in 1862, and after some lengthy negotiations a lease was executed in 1864, by which all previous wrongful acts were condoned and released on both sides. An Act of Parliament was passed in 1863, by which the Hartlepool Railway Company were to sell their mines within five years, and in 1865 the said railway company was amalgamated with the defendant company, and all their assets and liabilities were transferred to them.

And it was held, first, that although it was *ultra vires* of the railway company to work mines, the Act of 1863 implied that the company were to have power to work their mines until the mines were sold, and that upon the amalgamation with the defendant company the latter became liable for the wrongful acts of their predecessors; secondly, that the wrongful acts committed in 1863 were not condoned by the release of 1864, the plaintiffs having no ground for suspecting that while the release was in negotiation the previous settlement of boundaries had been broken; and, thirdly, that the Statute of Limitations only commenced to run from the time of the discovery of the wrongful acts, there being no laches attributable to the plaintiffs for not having discovered that damage prior to 1870, two years before the filing of the bill.

Malins, V. C., in giving judgment said:³ "The law, therefore, is I think, clearly settled that in cases of fraud the Statute of Limita-

¹ At page 235.

¹¹ *Mitchell v. Dors*, (1801) 6 Ves. 147; *Cowper v. Baker*, (1810) 17 Ves. 128; *Grey v. Northumberland*,

Ib. 282; *Greenwich Hospital v. Blaskett*, (1848) 12 Jur. 151.

² (1877) L. R. 4 Ch. D. 845.

³ At p. 860.

tions does not begin to run until the fraud is discovered; and although it is not necessary in this particular case to come to the conclusion that what was done was done fraudulently, yet for the purpose of this distinction between cases which are fraudulent and cases which are not, although, I repeat, I may be distinctly of opinion that neither the West Hartlepool Company (and as a corporation they could not commit a fraud), nor their agents, who were incapable of doing so, intended to commit a fraud; yet for the purposes of the statute, the breaking of bounds into your neighbor's colliery must be considered a fraudulent act; and, therefore, it is now clearly by these authorities settled, in my opinion, that in all cases of fraud the time for barring under the statute begins to run only from the time the fraud was discovered, or by reasonable diligence might have been discovered."

Concealed fraud will deprive a party of the benefit of the Statute of Limitations.³¹ *Fraus est celare fraudem.*

This is one of the many applications of the general rule that no man is allowed to take advantage of his own wrong; *nullus commodum capere potest de injuria sua propria.*

Actio personalis, etc. The "Trustee Act" ³² provides that in case any deceased person committed a wrong to another in respect of his real or personal property, the person so wronged may maintain an action against the executors or administrators of the deceased; such action to be brought at the latest within one year of the decease. This modifies the rule of the common law that all private wrongs as well as all public crimes are buried with the offender; *actio personalis moritur cum persona*. Bowen, L.J.,³³ states the rule to be, that the only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to be those in which property or the proceeds or value of property belonging to another have been appropriated by the deceased person and added to his own estate or monies. The rule therefore, except as modified by statute, would apply to all actions of trespass, trover or nuisance, and to actions for wrongfully carrying

³¹ *Rains v. Buxton*, (1880) 14 Ch. Div. 537.

³² *R. S. O.* (1897) c. 129, s. 11.

³³ In *Phillips v. Homfray*, (1883) 24 Ch. D. 439, at p. 454, where the maxim was elaborately dealt with.

Its history was subsequently discussed by the same learned Judge in *Finley v. Chirney*, (1888) 20 Q. B. D. 504. The rule does not hold in Quebec, having no place in the civil law.

minerals over or through the property of another, for fouling water, diverting a water course, or flooding a mine; but would not apply to an action for the wrongful abstraction by the defendant of minerals from the property of the plaintiff.⁴

Inspection. In *Bennett v. Whitehouse*,⁴¹ a suit by a mine owner against the owner of an adjoining mine for an alleged trespass in working into the plaintiff's mine, although the defendant denied the trespass an order was made allowing the plaintiff, at his own expense, to inspect the defendant's mine, with liberty to measure, dial, and make all such plans and surveys as might be necessary, and to use the defendant's machinery for ascending and descending, doing no injury to the defendant's works, and paying the defendant any expenses he might incur.

Romilly, M.R., said: ⁴² "Whenever it appears that a person has power to make use of his land to the injury of another, and there is *prima facie* evidence of his doing so, though it is contradicted, still, as the only way of ascertaining the fact is by an inspection, the Court always allows it if it can be done without injury to the defendant."⁴³

The removal of any obstruction to such an inspection may be ordered.⁴⁴

In a suit in Nova Scotia, for trespass to his mine, plaintiff obtained an order for the inspection of defendant's mine, which was upheld in appeal as being essential to enable the plaintiff to prove his case.⁵

In Ontario⁶ a party to a cause or matter has the right to apply to the Court or Judge for an order for the inspection, by the jury, himself, or his witnesses, of any real or personal property, the inspec-

⁴ *Phillips v. Fothergill*, (1886) 11 A. C. 466; *Batthyany v. Walford*, (1887) 36 Ch. D. 279; *Finley v. Chirney*, (1888) 20 Q. B. D. 504; *Concha v. Murrietta*, (1889) 40 Ch. D. 553; *Phillips v. Homfray*, (1890) 44 Ch. D. 699; affirmed by Court of Appeal (1892) W. N. 4.

⁴¹ (1860) 28 Beav. 119.

⁴² P. 122.

⁴³ *Walber v. Fletcher*, (1804) 3 Bl. O. S. 172. The order in *Lonsdale's Case*, referred to by Romilly, M.R., where the result of the inspection was to show that coal to

the amount of £3,000 had been taken away from the defendant, is printed in the note to *E. I. Company v. Kynaston*, (1821) 3 Bl. O. S. 168; *A.-G. v. Chambers*, (1849) 12 Beav. 159; *Ennor v. Barwell*, (1860) 1 DeG. F. & J. 529; see also *Whaley v. Brancker*, (1864) 10 L. T. N. S. 155; *Cooper v. Ince-Hall Co.*, (1876) W. N. 24.

⁴⁴ *Seton on Decrees*, 4th Ed., 208

⁵ *Gray v. Hardman*, (1896) 28 N. S. R. 235.

⁶ By Consolidated Rule 571.

tion of which may be material to the proper determination of the question in dispute.

Criminal Code. The enumerated classes of subjects over which the Parliament of Canada has exclusive legislative authority include :

"The Criminal Law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters."⁷

The Criminal Code, 1892,⁸ contains the following sections relating to mines and minerals.

Danger to Life. Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever, which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty.⁸¹

Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty.⁸²

⁹ Every one is guilty of an offence and liable, on summary conviction, to a fine or imprisonment, with or without hard labour (or both), who

(b) Being the owner, manager or superintendent of any abandoned or unused mine or quarry or property, upon or in which any excavation has been or is hereafter made, of a sufficient area and depth to endanger human life, leaves the same unguarded and uninclosed by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking or falling thereinto ; or

(c) Omits, within five days after conviction of any such offence, to make the inclosure aforesaid, or to construct around¹ or over such exposed opening or excavation a guard or fence of such height and strength.

2. Every one whose duty it is to guard such hole, opening, aperture or place is guilty of manslaughter if any person loses his life by accidentally falling therein while the same is unguarded.⁹¹

⁷ B. N. A. Act, s. 91, s.-s. 27.

⁸ 55-56 Vict. (Dom.) c. 29.

⁸¹ Section 213.

⁸² Section 214.

⁹ R. S. C. c. 163, ss. 29, 30, 31 and 32.

⁹¹ Section 255.

Concealing Gold and Silver. ¹⁰ Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim.¹¹

Stealing Ore. ¹ Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, or black lead, or any coal, or cannel coal, or any marble, stone or other mineral, from any mine, bed or vein thereof respectively.²

It is not an offence to take, for the purposes of exploration or scientific investigation, any specimen, or specimens of any ore or mineral from any piece of ground uninclosed and not occupied or worked as a mine quarry or digging.²¹

The Criminal Law and Practice Statute, 1864, s. 104, of Victoria (Australia), enacts that whoever shall steal, or sever with intent to steal, any gold from any mine, bed, or vein thereof, shall be guilty of felony, and it was held that an information under this section was sufficiently proved by showing that the gold taken had been removed from its natural position (*in situ*), and that the gold being in the form of separate grains contained in auriferous wash-dirt did not render it less a bed or vein. Gold when found is always separated by something, earth or rock or quartz; it is only a question of degree.²²

In *R. v. Wilson* ²³ it was held that gold in wash-dirt is the "ore of a metal" within the meaning of "The New South Wales Larceny Act," and may be described in an information as "gold ore." In that case Martin, C.J., expressed the view that larceny can not be committed of gold belonging to the Crown by virtue of its prerogative while not detached from the mine.

Fraud. ³ Every one is guilty of an indictable offence and liable to two years' imprisonment, who

¹⁰ R. S. C. c. 164, s. 31.

¹¹ Section 312.

¹ R. S. C. c. 164, s. 25.

² See *R. v. Smith*, (1838) 2 M. & R. 115; *R. v. Trevenner*, (1838) 2 M. & R. 476.

²¹ Section 343.

²² *Reg. v. Davies*, (1869) 6 W. W. and A. B. (L.) 246.

²³ (1874) 12 N. S. W. S. C. R. (L.) 258.

³ R. S. C. c. 164, ss. 27, 28 and 29.

(a) Being the holder of any lease or license issued under the provisions of any Act ⁴ relating to gold or silver mining, or by any persons owning land supposed to contain any gold or silver, by fraudulent device or contrivance, defrauds or attempts to defraud Her Majesty, or any person, of any gold, silver or money payable or reserved by such lease, or, with such intent as aforesaid, conceals or makes a false statement as to the amount of gold or silver procured by him ; or

(b) Not being the owner or agent of the owners of mining claims then being worked, and not being thereunto authorized in writing by the proper officer in that behalf named in any Act relating to mines in force in any Province of Canada, sells or purchases (except to or from such owner or authorized person) any quartz containing gold, or smelted gold or silver, at or within three miles of any gold district or mining district, or gold mining division ; or

(c) Purchases any gold in quartz, or any unsmelted or smelted gold or silver or otherwise unmanufactured gold or silver of the value of \$1 or upwards (except from such owner or authorized person), and does not at the same time execute in triplicate an instrument in writing, stating the place and time of purchase and the quantity, quality and value of gold or silver so purchased, and the name or names of the person or persons from whom the same was purchased, and file the same with such proper officer within twenty days next after the date of such purchase.⁴¹

⁵ Mischief to Mines. Every one is guilty of the indictable offence of arson, and liable to imprisonment for life, who wilfully sets fire to any building or structure, whether such building, erection or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or any well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any of Her Majesty's stores or munitions of war.⁵¹

Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully attempts to set fire to anything

⁴ By the Criminal Code, 1892, s. 3, s.-s. (a) "any Act" includes any Act passed or to be passed by the Legislature of any Province of Canada.

⁴¹ Section 375. As to search warrant see s. 569; fine, s. 958; indictment, s. 621.

⁵ R. S. C. c. 168, ss. 30 and 31.

⁵¹ 55-6 Vict. (1892) section 482, Criminal Code.

mentioned in the last preceding § or who wilfully sets fire to any substance so situated that he is liable that anything mentioned in the last preceding section is liable to catch fire therefrom.⁵²

Every one is guilty of a misdemeanour, punishable by a fine not exceeding £100, or by imprisonment for a term not exceeding seven years, or by both such fine and imprisonment, who, with intent to injure a mine or oil well, or obstruct the working thereof—

(a) Causes any water, earth, rubbish or other substance to be conveyed into the mine or oil well, or any subterranean channel communicating with such mine or well; or

(b) Damages any shaft or any passage of the mine or well; or

(c) Damages, with intent to render useless, any apparatus, building, erection, bridge or road belonging to the mine or well, whether the object damaged be complete or not; or

(d) Hinders the working of any such apparatus; or

(e) Damages or unfastens, with intent to render useless, any rope, chain or tackle used in any mine or well or upon any way or work connected therewith.⁵³

Search Warrant. ⁵⁴ On complaint in writing made to any justice of the county, district or place, by any person interested in any mining claim, that mined gold or gold bearing quartz, or mines or unmanufactured silver or silver ore, is unlawfully deposited in any place or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint; and if, upon such search, any such gold or gold bearing quartz, or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right.

2. The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part LVIII.⁵⁵

⁵² *Ib.*, section 483.

⁵³ Section 498; see *R. v. Wittingham*, (1840) 9 C. & P. 234; *R. v. Norris*, (1840) 9 C. & P. 241; *Queen*

v. Fisher, (1865) L. R. 1 Cr. Cas. R. 7.

⁵⁴ R. S. C. c. 174, s. 53.

⁵⁵ Section 571.

CHAPTER XIV.

ONTARIO.

THE MINES ACT.

R. S. O. 1897, Chapter 36, as Amended.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "The Mines Act,"¹ 55 Vict. c. 9, s. 1.

¹ No laws or regulations relating to mines were adopted in Ontario previous to 1845, but each case requiring executive action was dealt with as it arose by Order in Council. The following is a list of Orders in Council and Regulations: 12th December, 1845; 7th April, 1846; 18th April, 1846; 9th May, 1846; 7th October, 1846; 2nd November, 1846; Report of Commissioner of Crown Lands, 1853, and regulations founded thereon; 15th March, 1861; 21st April, 1862; 3rd March, 1864, for text of which see Report of the Royal Commission (Ontario), 1890, pp. 263 *et seq.*

In 1864 (27 & 28 Vict. c. 9) was passed an Act respecting Gold Mines, repealed in 1868 by 31 Vict. c. 19.

In 1865 (29 Vict. c. 9) was passed an Act to amend "The Gold Mining Act," 27 & 28 Vict. c. 9. Assented to 18th September, 1865. Cited as "The Gold Mining Amendment Act of 1865," which was also repealed in 1868 by 31 Vict. c. 19.

In 1867-8, 31 Vict. c. 19, an Act respecting Gold and Silver Mines. Assented to 4th March, 1868. Cited as "The Gold and Silver Mining Act of 1868," which was repealed in 1869 by 32 Vict. c. 34, s. 2.

In 1868-9, 32 Vict. c. 34, an Act relating to Mining. Assented to 23rd January, 1869. Cited as "The General Mining Act of 1869."

In 1877 the previous Acts were consolidated as Rev. Stat. Ont. c. 29, an Act respecting Mining. Cited as "The General Mining Act."

This Act as amended by 49 Vict. c. 8, s. 1, was continued in the revision of 1887, as R. S. O. c. 31. An Act respecting Mining. Cited as "The General Mining Act."

This was amended in 1890 by 53 Vict. c. 9. An Act to amend the General Mining Act. Assented to 7th April, 1890.

In 1890, by 53 Vict. c. 10, was introduced an Act respecting Mining Regulations. (Assented to 7th April, 1890). Cited as "The Mining Operations Act, 1890," and which came into force on the 1st day of July, 1890.

The law was again amended in 1891 by 54 Vict. c. 8 (an Act to amend the General Mining Act. Assented to 4th May, 1891).

The previous legislation was consolidated and amended in 1892 by 55 Vict. c. 9. (Assented to 14th April, 1892). Cited as "The Mines Act, 1892," section 76 of which repealed R. S. O. 1887, c. 31; 53 Vict. c. 9 & 10, and 54 Vict. c. 8, "except in so far as may be necessary for the completion of transactions begun thereunder."

The mining laws were again amended in 1894 by 57 Vict. c. 16, an Act relating to mines and mining lands. Assented to 5th May, 1894.

And in 1896 by 59 Vict. c. 13, an Act to make further provision respecting mines and mining. Assented to 7th April, 1896.

And again in 1897 by 60 Vict. c. 8, an Act to further improve the mining laws. Assented to 13th April, 1897.

The existing mining laws, as revised and consolidated in 1897, appear as R. S. O. 1897, c. 36, cited as "The Mines Act," except as amended by 61 Vict. (1898) c. 11.

PART I.—GENERAL PROVISIONS.

INTERPRETATION.

2. Where the following words occur in this Act, and in Orders in Council or Regulations under it, they shall be construed in the manner hereinafter mentioned unless a contrary intention appears:—

1. The noun "mine"¹ shall include every shaft in the course of being sunk, and every adit, level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane belonging to any mine to which this Act applies, together with all rocks, soils or strata containing any ores or minerals, and all roast yards, smelting furnaces and other places where the work of mining may be carried on. 55 Vict. c. 9, s. 2 (1); 57 Vict. c. 16, s. 2 (part).

2. The verb "mine" and the participle "mining"² shall include any mode or method of working whatsoever whereby the soil or earth or any rock, stone or quartz may be disturbed, removed, carted, carried, washed, sifted [roasted],³ smelted, refined, crushed

or otherwise dealt with for the purpose of obtaining [any metal or mineral] ⁴ therefrom, whether the same may have been previously disturbed or not. 55 Vict. c. 9, s. 2 (2); 57 Vict. c. 16, s. 2, part; 59 Vict. c. 13, s. 1.

3. "Mining division" ⁵ shall include any tract of country declared to be a mining division within this Act.

4. "Crown lands" shall include all Crown lands, school lands or clergy lands not in the actual use or occupation of the Crown, or of any public Department of the Government of the Dominion of Canada or of this Province, or of any officer or servant thereof, and not under lease or license of occupation from the Crown or the Commissioner of Crown Lands, and as to which no adverse claim exists which is subsequently recognized by the Commissioner of Crown Lands. ⁶

5. "Surface rights" ⁷ shall mean lands granted, leased or located for agricultural or other purposes and in respect of which the ores, minerals and mines thereupon or under the surface thereof are by statute, the patent or lease, or otherwise, reserved to the Crown. 55 Vict. c. 9, s. 2 (3-5).

6. "Mining rights" shall mean the ores, mines and minerals on or under any land where the same are dealt with separately from the surface of the land. ⁸ 60 Vict. c. 8, s. 1.

7. "Party wall" shall mean a bank of earth or rock left between two excavations. ⁹

8. "Shaft" shall include pit, and "plan" shall include a map and section, and a correct copy or tracing of any original plan as so defined. ¹⁰

9. "Machinery" shall include steam or other engines, boilers, furnaces, stamps or other crushing apparatus, winding or pumping gear, chains, trucks, tramways, tackle, blocks, ropes or tools, and all appliances of whatsoever kind used in or about or in connection with the mine. ¹¹

10. "Owner" when used in relation to any mine shall mean any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and shall not include a person or body corporate who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine. ¹²

11. "Agent" when used in relation to any mine shall mean any person having, on behalf of the owner, care or direction of any mine, or of any part thereof, and shall include "manager" and "superintendent."¹³

12. "Inspector" shall include any inspector appointed under this Act, and whether for a mining division or any part thereof or for the Province.¹⁴ 55 Vict. c. 9, s. 2 (7-12).

¹ In 1864 by 27 & 28 Vict. c. 9, part of section 1, sub-section 4, the noun "mine" is interpreted as follows:—"The word 'mines' shall include both quartz mines and alluvial mines, and all other gold mines whatsoever, and all places where the work of 'mining,' as above defined, may be carried on."

This was amended in 1867-8 by 31 Vict. (Ontario) c. 19, s. 3, s.-s. 4, by adding after the words "gold" on 4th line, "or silver"; and in 1868-9 by 32 Vict. (Ontario) c. 34, s. 42, s.-s. 2, the above is repealed and the following substituted: "The word 'mines' shall be held to mean and include all rocks, soils or strata containing any metal or metals, and all places where the work of mining as above defined may be carried on." This definition is continued throughout R. S. O. 1877 and 1887, and in 1892 by 55 Vict. c. 9, s. 2, s.-s. 1, which is identical with R. S. O. 1897, c. 36, s. 2, s.-s. 1, omitting after the word "all" on 9th line the words "roast yards, smelting furnaces, and other"; and in 1894 by 57 Vict. c. 10, s. 2, the section is amended to read as in R. S. O. 1897, s. 2, s.-s. 1.

² This sub-section is derived from 27 & 28 Vict. c. 9, s. 1, s.-s. 1. The derivative section omits the words "or quartz" in the 3rd line, the word "roasted" in the 4th line, and substitutes the words "any metal or mineral therefrom" in the 6th line for the word "gold."

³ Inserted in 1894 by 57 Vict. c. 16, s. 2.

⁴ "Gold," in 27-28 Vict. c. 9. "Metal or metals," in 32 Vict. c. 34, and in 1892 (55 Vict. c. 9); "metal or metals, mineral or minerals," in 1896 (59 Vict. c. 13), when the word "mineral" was first introduced.

⁵ In 1864, 27-28 Vict. c. 9, s. 1, s.-s. 6, was "gold mining division;" the word "gold" was omitted in 1868-9 by 32 Vict. c. 34, s. 42, s.-s. 3.

⁶ This sub-section is taken from the statute of 1868-9, 32 Vict. c. 34, s. 42, s.-s. 4, which limits the definition of 1864, 27-28 Vict. c. 9. As to what lands are "Crown lands," see *Srigley v. Taylor*, (1884) 6 O. R. 108; *Shalrp v. The Lakefield Lumber Company*, (1890) 17 A. R. 322; 19 S. C. R. 657; *Harper v. Charlesworth*, (1825) 4 B. & C. 584, 586, 591, and chapter 1.

For a history of the public lands of Ontario from the time of their acquisition by the Crown till they became subject to provincial legislative control, see the very able and luminous judgment of Chancellor Boyd, in *Reg. v. St. Catharines Milling & Lumber Co.*, 10 O. R. 196, affirmed by the Privy Council in 14 App. Cas. 46. "School lands" refers to the million acre tract set apart by Order in Council pursuant to 12 Vict. c. 200.

See as to "Common School lands" case of the Province of Quebec v. the Province of Ontario and the Dominion of Canada, now pending in the

Supreme Court of Canada. "Clergy lands" were lands set apart by Imperial Act, 31 Geo. III. c. 31, and proclamation of Lt.-Governor Simcoe, dated 7th February, 1892 (see *Sess. Papers, U. C.*, 1833-4, p. 40); Imperial Act, 6 Geo. IV. c. 59; Imperial Act, 7 & 8 Geo. IV. c. 62; Imperial Act, 3 & 4 Vict. c. 78; and Imperial Act, 16 Vict. c. 21.

The clergy reserves were "secularized" in 1854 by Act of the Parliament of Canada, 18 Vict. c. 2, subject to certain stipends and allowances chargeable on the said funds.

The Nullum Tempus Act, 9 Geo. III. (1768-9) c. 16, does not apply to the unsurveyed lands of the Crown. *Reg. v. McCormack*, 1859, 18 U. C. R. 131.

⁷ This definition appears for first time in 1892, 55 Vict. c. 9, s. 2, s.-s. 5, with which it is identical.

Note similarity between the phrase "reserved to the Crown" in this section, and the phrase "reserved by the Crown" in No. 16 of "the Regulations for Mining Divisions," approved by the Lieutenant-Governor in Council 15th September, 1897, first published in the Ontario Gazette on 18th September, 1897, at p. 1333 (see App. I). *Quære*, when the "surface rights" have been disposed of in a "mining division," whether there is any right to stake. See also "The Free Grants and Homesteads Act," R. S. O. 1897, c. 29, s. 13; and R. S. O. 1897, c. 30; Goddard on Easements, ed. of 1896, pp. 35 and 70.

⁸ 55 Vict. c. 9, s. 2, s.-s. 6, "mining rights" or "mineral rights" shall include the right of the ores, minerals and mines, upon or under or connected with the surface rights.

⁹ Identical with 27 & 28 Vict. c. 9, s. 1, s.-s. 10.

¹⁰ Introduced in 1890 by 53 Vict. c. 10, s. 3.

¹¹ 53 Vict. c. 10, s. 3.

¹² 53 Vict. c. 10, s. 3.

¹³ 53 Vict. c. 10, s. 3.

¹⁴ 53 Vict. c. 10, s. 3.

ROYALTIES¹ ON ORES OR MINERALS.

3. All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents and lying within this Province, are [declared to have been repealed and abandoned];² and such lands, ores and minerals shall be free and exempt from every such royalty, tax or duty; and all reservations of gold and silver mines contained in any patent issued prior to the date aforesaid,

granting in fee simple lands situate within this Province, are hereby rescinded and made void, and all such mines in or upon such lands shall be deemed to have been granted in fee simple as part of such lands, and to have passed with such lands to the subsequent and present proprietors or owners thereof in fee simple [but the provisions of this section shall not be construed to apply to lands patented or to be patented under "The Free Grants and Homesteads Act"].³ 55 Vict. c. 9, s. 3.

¹ 27 & 28 Vict. c. 9, s. 34, provided for the payment to the Crown of the proportion of the gross quantity of gold extracted according to the terms and conditions of the Letters Patent, and for the furnishing of monthly accounts.

In 1868-9 by 32 Vict. c. 34, s. 3, it was enacted that "all royalties, taxes or duties, which, by any patent or patents heretofore issued, are reserved, imposed or made payable upon, or in respect of, any ores or minerals extracted from the lands granted by such patents, and lying within this Province, are hereby repealed and abandoned, and such lands, ores and minerals, shall henceforth be free, and exempt from every such royalty, tax or duty."

And by section 4—"All reservations of gold and silver mines contained in any patent or patents heretofore issued, granting in fee simple any land or lands situate within this Province, are hereby rescinded and made void, and all such mines in or upon any such lands shall henceforth be deemed to have been granted in fee simple as part of such lands, and to have passed with such lands to the subsequent and present proprietors or owners thereof in fee simple."

It will be noted that no provision is made as to reservations to the Crown of minerals other than gold and silver, and therefore such other minerals so reserved remain the property of the Crown.

And by section 5—"No reservation or exception of gold, silver, iron, copper, or other mines or minerals, shall hereafter be inserted in any patent from the Crown granting any lands in this Province sold as mining lands."

Sections 3, 4, and 5, *supra*, were consolidated in 1877 as R. S. O. c. 29, ss. 3, 4 & 5; and again in 1887 as R. S. O. c. 31, ss. 3, 4 & 5.

² See 32 Vict. c. 34, s. 3.

³ Inserted in 1892 by 55 Vict. c. 9, s. 3. *Quære* as to royalties, taxes or duties, in respect of any ores or minerals extracted from lands patented under "The Free Grants and Homesteads Act," R. S. O. 1887, c. 25, prior to 14th April, 1892, whether same are free from royalties, etc., and also whether the gold and silver mines passed as part of such lands.

4.—(1) All ores and minerals mined, wrought or taken from lands located, sold and granted or leased by the Crown on or after the 4th day of May, 1891,¹ and before the 1st day of January, 1900, shall be subject to a royalty to the Crown for the use of the Province,

to be reckoned at the following rates, whether such royalty be reserved in the grant, patent or lease, or not:

- (a) On ores of silver, nickel, nickel and copper, and iron, two per cent.
- (b) On all other ores and minerals, such royalty as shall be from time to time imposed by Order in Council, not exceeding two per cent.

(2) The said royalties shall be calculated ² upon the value of the ores or minerals at the pit's mouth [less the actual cost of labor and explosives for mining and raising the same to the surface],³ and [the subsequent treatment thereof for the market],⁴ and shall be payable at such time and times, and the values shall be fixed and ascertained in such manner as shall be provided by regulation to be made by the Lieutenant-Governor in Council in that behalf.

(3) The said royalties shall not be imposed or collected upon any ores mined, wrought or taken until after seven years from the date of the patent or lease, and no higher rate of royalty shall be levied upon ores and minerals taken from land than that provided for by the statute in force at the time of the sale or lease of such land.⁵

(4) The royalties payable under this section shall be in lieu of the larger royalties reserved under section 3 of the Act passed in the 54th year of Her Majesty's reign intituled "An Act to amend the General Mining Act," or under section 4 of "The Mines Act, 1892." 55 Vict. c. 9, s. 4, part; 57 Vict. c. 16, s. 1, part; 60 Vict. c. 8, s. 2.

¹ 54 Vict. c. 8, s. 3 (1), provided that "all ores and minerals mined, wrought or taken from lands, located, sold and granted or leased by the Crown after the passing of this Act, shall be subject to a royalty to the Crown for the use of the Province, whether such royalty be reserved in the grant, patent or lease, or not. The following specifically named ores shall be subject to the royalty following: Silver, nickel, or nickel and copper, 3 per cent.; all other ores, except iron, shall be subject to such royalty as shall be from time to time imposed by Order in Council, not exceeding 3 per cent., and iron ore not exceeding 2 per cent.

This was amended in 1892 by 55 Vict. c. 9, s. 4 (1), which provided that "all ores and minerals mined, wrought or taken from lands, located, sold and granted, or leased by the Crown on or after the 4th day of May, 1891, shall be subject to a royalty to the Crown for the use of the Province, to be reckoned at the following rates, whether such royalty be reserved in the grant, patent or lease, or not.

- (a) Silver, nickel, or nickel and copper, 3 per cent.
- (b) Iron ore, not exceeding 2 per cent.

(c) All other ores, such royalty as shall be from time to time imposed by Order in Council, not exceeding 3 per cent.

And again in 1894, 57 Vict. c. 16, s. 1 (1), which enacts that "instead of the royalties on ores and minerals, reserved and payable to the Crown for the use of the Province under section 3 of 'An Act to amend the General Mining Act,' being chapter 8 of the Acts passed, 54 Victoria, and under section 4 of 'The Mines Act, 1892,' there shall be so reserved and payable to the Crown on ores and minerals taken from the lands, located, sold, granted, or leased under the said Acts, after 1st May, 1891, and on ores and minerals taken from all lands which may be hereafter located, sold, granted, or leased by the Crown, until the 1st January, 1900, a uniform charge at the rate of 2 per cent. on the ores mentioned in Articles a and b of said section 4, and a charge of not more than 2 per cent. on the ores mentioned in Article c, etc.

And again in 1897, 60 Vict. c. 8, s. 2, which amends s. 4 of (1892) 55 Vict. c. 9, s.-s. 1, by inserting after the word "ores" in clause (c) the words "and minerals."

² Derived from 54 Vict. c. 8, s. 3, s.-s. 2.

³ Inserted in 1892, 55 Vict. c. 9, s. 4, s.-s. 2.

⁴ Inserted in 1894, 57 Vict. c. 16, s. 1 (1).

⁵ Derived from 54 Vict. c. 8, s. 3, s.-s. 1; and 55 Vict. c. 9, s. 4, s.-s. 1.

5.¹—(1) Subject to the provisions of sub-section 3 of the preceding section, which shall apply to all royalties reserved under this section, all ores and minerals mined, wrought or taken from lands located, sold and granted or leased by the Crown on or after the 1st day of January, 1900, shall be subject to a royalty to the Crown for the use of the Province, to be reckoned at the following rates, whether such royalty be reserved in the grant, patent or lease, or not:

- (a) On ores of silver, nickel, or nickel and copper, three per cent.
- (b) On iron ore, not exceeding two per cent.
- (c) On all other ores and minerals, such royalty as shall be from time to time imposed by Order in Council, not exceeding three per cent.

(2) Such royalties shall be calculated upon the value of the ores or minerals at the pit's mouth, less the actual cost of labor and explosives for mining and raising the same to the surface, and shall be payable at such time and times, and the values shall be fixed and ascertained in such manner as shall be provided by regulation to be made by the Lieutenant-Governor in Council in that behalf.² 55 Vict. c. 9, s. 4, part; 57 Vict. c. 16, s. 1, part; 60 Vict. c. 8, s. 2.

¹ 1894, c. 16, s. 1, s.-s. 2. "Nothing in this Act contained shall prevent the full operation of section 4 of the said Act (1892), upon or in

respect of all mining lands which may be located, granted, sold or leased by the Crown, from and after the 1st January, 1900, or upon or in respect of any mines thereon or minerals which shall be mined, wrought or taken therefrom": 1897, R. S. O. c. 36, s. 5, s.-s. 1.

² The provision for the calculation of the royalty is the same as section 4, sub-section 2, of this Act, omitting the words "and the subsequent treatment thereof for the market" on the 4th line.

The effect of sub-sections 3, 4, and 5, *supra*, is that in all cases of patents issued prior to the 4th May, 1891, there are no royalties. As to patents issued between the 4th May, 1891, and 1st January, 1900, the royalties provided for by section 4 are payable irrespective of the provisions in the patent or of the Act in force at the time such patent was issued.

It is also to be noted that the royalties under section 4 are to be calculated upon the value of the ores or minerals at the pit's mouth, less the actual cost of labour and explosives for mining and raising the same to the surface and the subsequent treatment thereof for the market, whereas in patents issued after 1900 the cost of such subsequent treatment is not to be deducted. As to patents issued on or after 1st January, 1900, the royalties provided for by section 5 will be payable.

6. The Lieutenant-Governor in Council may, upon the recommendation of the Director of the Bureau of Mines, direct that the ores of any mine taken or to be taken out by way of experiment and for the purpose of ascertaining the quality and value of the mineral and mine shall be free from royalty.¹ 55 Vict. c. 9, s. 5.

¹ Derived from 54 Vict. c. 8, s. 4.

REGULATIONS.

7. The Lieutenant-Governor in Council may from time to time make such regulations¹ as he deems necessary or expedient for the appointment of Arbitrators or Mining Boards to hear and determine appeals from the decisions of Inspectors of divisions; for the prescribing, defining and establishing of the powers, duties and mode of procedure of the Arbitrators or Mining Boards; for the opening, construction, maintenance and using of roads [to],² through or over mining claims, mining locations or lands hereafter sold as mining lands; for the opening, construction, maintenance and using of ditches, aqueducts or raceways through or over such claims, locations or lands for the conveyance and passage of water for mining purposes, and generally for the purpose of carrying out this Act; and such regulations, after publication in the Ontario Gazette, shall have

the force and effect of law. 55 Vict. c. 9, s. 6 (1); s. 28 (2); 60 Vict. c. 8, s. 4.

¹ Derived from 27 & 28 Vict. c. 9, s. 35, and 32 Vict. c. 34, s. 35.

No regulations have yet been made.

² Inserted by 60 Vict. c. 8, s. 4.

8. Any regulations made under this Act by the Lieutenant-Governor in Council shall, if made when the Legislative Assembly is sitting, be laid upon the table of the House during the then session, and if made at any other time shall be laid upon the table of the House within fifteen days from the beginning of the next session thereof. 55 Vict. c. 9, s. 6 (2); 57 Vict. c. 16, s. 16.

¹ Derived from 1591 by 54 Vict. c. 8, s. 11.

MINERALS ON CROWN LANDS.

9. Any person or persons may explore for mines or minerals on any Crown lands, surveyed or unsurveyed, and not for the time being marked or staked out and occupied as hereinafter mentioned ¹ [except on such lands as may by the Lieutenant-Governor in Council have been withdrawn from sale, location or exploration as being valuable for their pine timber or for any other reason, and any person attempting to explore, occupy or work any lands so withdrawn shall incur a penalty of \$20 and costs and in default of payment of the fine and costs such person may be imprisoned for any period not exceeding one month.] ² 55 Vict. c. 9, s. 7; 60 Vict. c. 3, s. 3; c. 8, s. 5.

¹ 1868-9, 32 Vict. c. 34, s. 6.

² Inserted by 60 Vict. c. 8, s. 5.

10. (1) Crown lands not situated within any Mining Division which are supposed to contain ores or minerals and mining rights in lands the ores or minerals whereof have been reserved by the Crown, may be sold or leased as mining lands, in blocks, sections or lots, to be called "mining locations."

(2) Where such Crown lands are situated within a mining division they may be occupied and worked as "mining claims," under miners' licenses, as hereinafter provided. ² 60 Vict. c. 8, s. 6.

¹ The High Court of Justice for Ontario has subject, as in the Judicature Act mentioned, the like jurisdiction and powers as by the laws of England were on the 4th day of March, 1837, possessed by the Court of Chancery in England.

(S.a. 7.) To decree the issue of letters patent from the Crown to rightful claimants.

(S.s. 8.) To repeal and avoid letters patent issued erroneously, or by mistake, or improvidently, or through fraud. R. S. O. 1897, c. 51, s. 26.

Except where otherwise provided the rules of decision are the same as governed the Court of Chancery in England, in like cases, on the 4th day of March, 1837.

In *Simpson v. Grant*, 1855, 5 Gr. 267, Blake, C., held the Court could not enforce against the Crown specific performance of an Order in Council (unwarranted by statute), for the grant of land to the plaintiff, and that if the Crown upon a deliberate view of all the circumstances, and in the absence of fraud or mistake, thought proper to issue letters patent to the defendants the Court has not jurisdiction to set aside the grant.

The following are cases where a patent or Crown grant has been set aside:

(1) Attorney-General being a party: *Attorney-General v. Garbutt*, (1856) 5 Gr. 383; *Attorney-General v. Hill*, (1861) 8 Gr. 532; *Attorney-General v. McNulty*, (1860) 8 Gr. 324; *Stevens v. Cook*, (1864) 10 Gr. 410; *Attorney-General v. McNulty*, (1865) 11 Gr. 281; *Attorney-General v. Contois*, (1878) 25 Gr. 346.

(2) Attorney-General not being a party: *Martyn v. Kennedy*, (1853) 4 Gr. 61; *Proctor v. Grant*, (1862) 9 Gr. 26, 224; *Frecht v. Scheck*, (1863) 10 Gr. 254.

The following are cases in which the patent attacked has been upheld:

(3) Attorney-General being a party: *Westbrooke v. Attorney-General*, (1865) 11 Gr. 330; *McIntyre v. Attorney-General*, (1867) 14 Gr. 86; *Mutchmore v. Davis*, (1868) 14 Gr. 346; A. G. a defendant; *Rees v. Attorney-General*, (1869) 16 Gr. 467.

(4) Attorney-General not being a party: *Martin v. Kennedy*, 1850, 2 Gr. 80; *Simpson v. Grant*, (1855) 5 Gr. 267; *Saugeen v. Church Soc.*, (1858) 6 Gr. 538; *Scane v. Hartrick*, (1859) 7 Gr. 161; *McDiarmid v. Diarmid*, (1862) 9 Gr. 144; *Lawrence v. Pomeroy*, (1863) 9 Gr. 474; *Farmer v. Livingstone*, (1883) 8 S. C. R. 140; *Barnes v. Boomer*, (1864) 10 Gr. 532; *Malon v. McLean*, (1867) 13 Gr. 361; *Kennedy v. Lawlor*, (1868) 14 Gr. 224; *Cosgrove v. Corbett*, (1868) 14 Gr. 617; *Caldwell v. Fraser*, *supra*.

In *Blidey v. Ray* (not reported), the Q. B. Divisional Court held that the Attorney-General was a necessary party to an action to set aside a patent for fraud.

A grant of land from the Crown must be of record and under the Great Seal: *Jackson v. Wilkes*, 1836, 4 O. S. 142; *Sheldon v. Ramsay*, 1852, 9 U. C. R. 105.

The Crown is not bound to issue a patent to the claimant found entitled by the Heir and Devisee Commission: *McDiarmid v. McDiarmid*, 1862, 9 Gr. 144.

The commissioners under the Heir and Devisee Commission Act (now R. S. O. 1897, c. 31) are not bound by the strict rules applicable to Courts of Law: *Scane v. Hartrick*, 1859, 7 Gr. 161.

In *Brady v. Sadler*, 1890, 17 O. A. R. 365, extrinsic evidence was admitted to explain description in patent. *Miller v. Palmer*, 1835, 3 O. S. 425.

Other grants are admissible to aid in construction of patent. *Clark v. Bonnycastle*, 1835, 3 O. S. 528, and ambiguities may be cured by reference to prior maps and subsequent survey. *Horne v. Munro*, 1858, 7 U. C. C. P. 433.

A subsequent patent can not affect the construction of a prior patent: *Davis v. McPherson*, 1873, 33 U. C. R. 376; *Harrison v. Frost*, 1874, 34 U. C. R. 110; or grant land which passed under such prior patent. *Iler v. Nolan*, 1861, 21 U. C. R. 309; *Chisholm v. Robinson*, 1894, 24 S. C. R. 704.

² 32 Vict. c. 34, ss. 7 & 8. It is to be noted that these sub-sections are exclusive, and that therefore there is no authority, under s.-s. 1, to sell or lease, as mining locations, Crown lands in a mining division. The regulations relating to mining divisions (see Appendix I.) provide for the issue of patents of mining claims.

ENCOURAGEMENT OF IRON MINING.¹

11. (1) The Treasurer of the Province may, under the authority of such regulations as may be made from time to time by the Lieutenant-Governor in Council, pay out of the Iron Mining Fund, established by the Act passed in the 57th year of Her Majesty's reign, chapter 16, to the miners or producers of ore upon all iron ores which shall be raised or mined and smelted in the Province for a period of five years from the first day of [² January, 1896,] the equivalent of one dollar per ton of the [³ metallic iron] product of such ores; but no part of said moneys shall be so paid until the said regulations so far as they govern payments have been approved by the Legislative Assembly. 57 Vict. c. 16, s. 12; 59 Vict. c. 13, s. 6.

(2) Should so large a quantity of ore be raised or mined and smelted in any one year that the sum of \$25,000 will be insufficient to meet the payments provided for in the preceding sub-section, then payments to the miners or producers thereof shall be made upon a *pro rata* basis, so that no more than \$25,000 shall be paid for the produce of ores in any one year. 57 Vict. c. 16, s. 13.

¹ Appropriations for encouragement of iron mining were introduced in Ontario in 1894 by 57 Vict. c. 6, s. 11.

The regulations are printed in Appendix I.

² In 57 Vict. c. 16, s. 12, was "July, 1894."

³ In 57 Vict. c. 16, s. 12, was "pig metal."

12. Payments out of the appropriation of \$125,000 for the Iron Mining Fund shall cease and determine with the payments of any sum or sums which shall have been earned during the said period of

five years,¹ and any part or balance of the said sum remaining thereafter shall be returned to and become part of the Consolidated Revenue Fund of the Province. 57 Vict. c. 16, s. 14.

¹ Expires 1st January, 1901; see section 11, *supra*.

EXPLORATORY DRILLING.¹

13. (1) The Commissioner of Crown Lands may, out of the moneys voted for that purpose, purchase not more than two diamond drills to be used in exploratory drilling of ores or minerals in the Province, under rules and regulations² to be made by the Lieutenant-Governor in Council.

(2) The regulations shall, amongst other things, provide:

- (a) For the control and working of the drills under the direction of a person or persons employed for the purpose by the Bureau of Mines;
- (b) As to the payment of freight charges where the drills are used upon mines or lands other than those owned by the Crown;
- (c) As to the applications for the use of the drills and the method of dealing therewith;
- (d) As to the charges for the use of the drills and for damages thereto, or wear and tear connected therewith, and otherwise as to the Lieutenant-Governor in Council shall seem meet. 57 Vict. c. 16, s. 15.

¹ Government Diamond Drill for exploratory purposes, first provided for in 1894 by 57 Vict. c. 16, s. 15.

² See regulations printed in Appendix I.

BUREAU OF MINES¹ AND OFFICERS.

14. There shall be established in connection with the Department of Crown Lands a Bureau of Mines to aid in promoting the mining interests of the Province, and the Lieutenant-Governor in Council may appoint an officer to be known as the Director of the Bureau of Mines, who shall act under the direction of the Commissioner of Crown Lands, unless and till otherwise ordered, and who shall be paid such salary as shall be voted by the Legislature. 55 Vict. c. 9, s. 22.

¹ Established in 1891 by 54 Vict. c. 8, s. 9.

15. The Director of the Bureau of Mines shall have all the powers, rights and authority throughout the Province which an inspector or local agent has or may exercise in any mining division or locality, and such other powers, rights and authority for the carrying out of the provisions of this Act as shall be assigned to him by regulation.¹ 55 Vict. c. 9, s. 23.

¹ In 54 Vict. c. 9, s. 10, "for that purpose."

16. (1) ¹ The Lieutenant-Governor may appoint [for the Province, or any part thereof, and] ² for every Mining Division or for any part thereof, an Inspector, who shall be an officer of the Bureau of Mines, and may by Order in Council prescribe the duties and fix the salary of such Inspector. 55 Vict. c. 9, s. 25. 60 Vict. c. 8, s. 12.

(2) No person shall be appointed or authorized to act as an Inspector who practises or acts or is a partner of any person who practises or acts as a mining agent, or who is employed by the owners of or is interested in any mine.³ 55 Vict. c. 9, s. 64. 60 Vict. c. 8, s. 26.

¹ Derived from 32 Vict. c. 34, s. 14.

² Inserted in 1897 by 60 Vict. c. 8, s. 12.

³ Formerly limited to "mining claim within the division of which he was inspector."

17. The Lieutenant-Governor may from time to time appoint local officers or agents to receive applications for the sale of mining lands in their respective agencies and to carry out the provisions of any regulations¹ and Orders in Council in that behalf, and to supply information to intending purchasers, and such officers and agents shall be paid in such manner and at such rates as the Lieutenant-Governor in Council may direct. 55 Vict. c. 9, s. 28 (1).

¹ First provided for in 1890 by 53 Vict. c. 10, s. 2.

18. ¹ No [officer]² appointed under this Act shall, either directly or indirectly³ purchase or be or become proprietor of, or interested in, any Crown lands⁴ or mining claim;⁵ and any such purchase or interest shall be void;⁶ and if any officer violates the provisions of this section he shall forfeit his office and in addition thereto shall be liable to a penalty of \$500 for every such offence, to be recovered in an action by any person who for the same. 55 Vict. c. 9, s. 27.

¹ Derived from 32 Vict. c. 34, s. 41.

² In 32 Vict. c. 34, s. 41, "inspector," "officer," for definition see Stroud's Judicial Dictionary (1890), p. 527.

³ In 32 Vict. c. 34, s. 41, there follow the words "while he is such inspector," which were first omitted in 1892.

^d "Which were within the division for which he is inspector," which were also first omitted in 1892.

^e Care must be exercised in investigating titles to lands patented or leased since 2nd April, 1869, to see that, if Crown lands, they were not patented to any person who was then an inspector within the division for which he was then inspector, and if a mining claim that no inspector of division where same located while such inspector owned or became interested in same. As to Crown lands patented or leased since 14th April, 1892, it must be borne in mind there has been and is now no limitation as to the officer being an officer at the time of purchase, etc.

Any such officer appointed under any of the Mines Acts since 1892 may be held to be permanently disqualified from purchasing, or being or becoming proprietor of, or interested in, any Crown lands or mining claim; even though such officer be owner of mining claim at time of his application his interest might be held to be void.

Quære, whether his interest in a mining claim would revert to his grantor or to the Crown.

^f For definition of "Crown lands," see *ante*.

POWERS AND DUTIES OF INSPECTOR.

19.¹ An Inspector under this Act shall have power to do all or any of the following things, namely:

1. To make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act relating to matters either above or below ground are complied with in the case of any mine.
2. To enter, inspect and examine any mine and every portion thereof, at all reasonable times by day or night, but so as not to impede or obstruct the working of the mine.
3. To examine into and make enquiry respecting the state and condition of any mine, or any portion thereof, and the ventilation of the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine, or any mine contiguous thereto, and to give notice to the owner or agent in writing of any particulars in which he considers such mine or any portion thereof or any matter, thing or practice to be dangerous or defective, and to require the same to be remedied within the period of time named in such notice, and unless the cause of danger is removed or such defect is remedied within the time named, the owner or agent shall be guilty of an offence against this Act.

4. To exercise such other powers as may be necessary for ensuring the health and safety of miners and all other persons employed in or about mines and mining works

¹ Derived from 53 Vict. c. 10, s. 15, as amended in 1892 by 55 Vict. c. 9, s. 65, and further amended by 60 Vict. c. 8, s. 27.

20. Every Inspector under this Act shall make an annual report of his proceedings during the preceding year to the Director of the Bureau of Mines, which report shall be laid before the Legislative Assembly.¹

¹ 55 Vict. c. 9, s. 67, part.

21. In the event of a vacancy in the office of Mining Inspector any notice by this Act required to be given to such officer shall be given to the Director of the Bureau of Mines.¹

¹ 55 Vict. c. 9, s. 68.

22. On the occasion of any examination or inspection of a mine the owner shall, if required so to do, produce to the Inspector, or any other person authorized by the Commissioner of Crown Lands, an accurate plan of the workings thereof; every such plan as aforesaid shall show the workings of the mine up to within six months of the time of the inspection, and the owner shall, if required by such inspector or other authorized person, cause to be marked on such plan the progress of the workings of the mine up to the time of such inspection, and shall also permit the Inspector to take a copy or tracing thereof.¹

¹ 55 Vict. c. 9, s. 66.

23. Every Inspector shall be *ex officio* a Justice of the Peace of the county or united counties, district or districts which a mining division comprehends or includes, in whole or in part, or in which or in any portion of which a mining division lies; and it shall not be necessary that he shall reside therein or possess any property qualification whatever in order to enable him lawfully to act as such Justice of the Peace.¹

¹ 55 Vict. c. 9, s. 26 (1); 60 Vict. c. 8, s. 13.

24. Every Inspector shall, as to the mining division for which he is appointed, have power to settle summarily all disputes between licensees as to the existence or forfeiture of mining claims, and the extent and boundary thereof, and as to the use of water and access thereto, and generally to settle all difficulties, matters or questions between licensees which may arise under this Act; and the decision of such Inspector, in all cases under this Act, shall be final, except

where otherwise provided by this Act, or where another tribunal is appointed under the authority of this Act; and no case under this Act shall be removed into any court by *certiorari*.¹

¹ 55 Vict. c. 9, s. 26 (2); identical with concluding portion of 32 Vict. c. 34, s. 14.

25. Every Inspector appointed in and for a mining division under this Act may appoint any number of constables not exceeding four; and the persons so from time to time appointed shall be and are hereby constituted respectively constables and peace officers for the purposes of this Act, for and during the terms and within the mining divisions for which they are respectively appointed.¹

¹ 55 Vict. c. 9, s. 46; Constables appointed under this section are "officers" within the meaning of section 18, *supra*, and so prohibited from purchasing, being, or becoming proprietor of or interested in any Crown lands or mining claim.

PART II.—MINING LOCATIONS.

FORM, SIZE AND PRICE OF LOCATIONS.

26. Mining locations under this Act shall conform to the following requirements:

1. In the unsurveyed territory within the districts¹ of Algoma, Thunder Bay and Rainy River, and that part of the district of Nipissing which lies north of the French River, Lake Nipissing and the River Mattawa,² every regular mining location shall be rectangular in shape, and the bearings of the outlines thereof shall be due north and south and due east and west astronomically; and such location shall be of one of the following dimensions, namely, eighty chains in length by forty chains in width, containing three hundred and twenty acres, or forty chains square, containing one hundred and sixty acres, or forty chains in length by twenty chains in width, containing eighty acres, or twenty chains in length by twenty chains in width, containing forty acres.³
2. Where a mining location in the unsurveyed lands in the territory aforesaid borders upon a lake or river a road allowance of one chain in width shall be reserved along the margin of the lake or river, and the width of the location shall front

on the road allowance, and the bearings of the other outlines of the location shall be due north and south and due east and west astronomically, and the location shall otherwise conform to the requirements of the preceding subsection as nearly as the nature of the land will admit :⁴ Provided that the Commissioner of Crown Lands may, where in his opinion the public interests will not be prejudiced, specially direct that such reservation shall not be made in the case of any island or islands which contain not more than thirty acres.⁵

3. In the townships in the said territory surveyed or hereafter to be surveyed⁶ into sections or lots every mining location after such survey shall consist of a half, a quarter, an eighth, or a sixteenth of a section or lot as the case may be, but so that the area of any such mining location shall not be less than forty acres.⁷
4. In all patents [and leases]⁸ for mining locations in the territory aforesaid there shall be a reservation for roads of five per centum of the quantity of land professed to be granted.
5. In the lands not situate within the limits of the territory aforesaid mining locations shall be as may be defined by any Order in Council hereafter to be made, but so that the area of any such location shall be not less than forty acres.⁹

¹ The territorial division of Ontario into counties and districts is declared by R. S. O. (1897) c. 3.

² 1890, c. 9, s. 1 (1).

³ Added in 1890 by 53 Vict. c. 9, s. 1 (2). Prior to 7th April, 1890, the smallest mining location allowed was 80 acres.

⁴ Derived from 32 Vict. c. 34, s. 9, s.-s. 2. It has been contended that a grant of a mining location not reserving the chain road allowance was void as to the grant of the chain, which should have been reserved, and would be read by the Court as if the statutory road allowance had been reserved pursuant to the statute. The question was also discussed but not decided in *Caldwell v. Fraser*, *supra*.

Where there is a road allowance, the patentee is not a riparian proprietor and would not be entitled to land created by alluvion, which would not be an accretion to the land patented, but to the road allowance, the property of the Crown. *Cockburn v. Eager*, 1876, 24 Gr. 409. *Giles v. Campbell*, (1872) 19 Gr. 226. See reference to these cases by *Boyd, C.*, in *Ratte v. Booth*, (1886) 11 O. R. 491, 504.

Where land was described in a patent as commencing "in front on Lake Erie, at the south-east angle of the lot," it was held that the south-east angle of the lot as it stood at the time of the grant made, and not

a point shifting with the encroachment of the lake was meant. *Iler v. Nolan*, (1861) 21 U. C. R. 309.

² This proviso was added in 55 Vict. c. 9, s. 10, s.-s. 2. In cases covered by this proviso the reservation of a road allowance is discretionary. In all other cases within s.-s. 2 it is imperative. R. S. O. 1897, c. 1, s. 8, s.-s. 2.

³ See "The Surveys Act," R. S. O. (1897) c. 181.

⁴ The description by metes and bounds in the Crown Lands Department may be considered in construing patent describing land by number of lot and concession. *Hagarty v. Briton*, (1870) 30 U. C. R. 321; see *Hyatt v. Mills*, (1890) 20 O. R. 365. Per *Annan, C.J.*, for the Court, in appeal, 19 A. R. 329.

A patent of land described as in one concession, with metes and bounds extending into another concession will not pass any land in the latter concession. *Wigle v. Stewart*, (1869) 28 U. C. R. 427.

So where the land is described as in a township, and the description by metes and bounds would extend into a town. *Campbell v. Crooks*, (1852) 9 U. C. R. 639.

⁵ Inserted in 1892 by 55 Vict. c. 9, s. 10, s.-s. 4, leases having been first authorized in 1891 by 54 Vict. c. 8, s. 5.

⁶ 55 Vict. c. 9, s. 10 (5); 57 Vict. c. 16, s. 3.

27. ¹ Mining locations in unsurveyed territory shall be surveyed by an Ontario Land Surveyor,² and shall be connected with some known point in previous surveys, or with some other known point or boundary (so that the tract may be laid down on the office maps of the territory in the Department of Crown Lands), at the cost of the applicants, who shall be required to furnish [within four months of the time] ³ of their application the surveyor's plan, field notes ⁴ and description of the location, showing a survey in accordance with this Act and to the satisfaction of the Commissioner of Crown Lands, [and such surveyor's plan, field notes and description shall not be regarded as constituting a claim to the location on behalf of the party for whom or at whose instance they have been prepared, unless they shall be filed in the Department of Crown Lands immediately upon completion of the survey].⁵ 55 Vict. c. 9, s. 11; 60 Vict. c. 8, s. 7 (1).

¹ Derived from 32 Vict. c. 34, s. 2.

² See "The Surveys Act," R. S. O. (1897) c. 181.

³ Inserted by 60 Vict. c. 8, s. 7, s.-s. 1, in substitution for "with."

⁴ A certified copy of the field notes is admissible in evidence: *Carrick v. Johnston*, (1866) 26 U. C. R. 69; *Strong v. Jones*, (1850) 7 U. C. R. 385. So certified copy of plan: *Badgely v. Bender*, (1834) 3 O. S. 221; *Nicholson v. Page*, (1868) 27 U. C. R. 318. Or a sworn copy: *Whelan v. McLachlan*, (1865) 16 U. C. C. P. 102.

⁵ Added by 60 Vict. c. 8, s. 7.

Where there is a discrepancy between the boundaries indicated by work on the ground and those shown on the plan, the work on the ground will govern. *Ovens v. Davidson*, 1860, 10 U. C. C. P. 302; *Carrick v. Johnston*, (1866) 26 U. C. R. 69; *McGregor v. Calcutt*, (1868) 18 U. C. C. P. 39; *Plumb v. Steinhoff*, (1887) 14 S. C. R. 739.

In determining boundaries, the true astronomical line is preferred to a line run magnetically, making no allowance for the variations of the compass. *Thibaudenau v. Skead*, 1876, 39 U. C. R. 387.

28. In addition to the requirements of sections 26 and 27,¹ every application for a mining location shall be accompanied with an affidavit showing the discovery of valuable ore or mineral thereon by or on behalf of the applicant, and that he has no knowledge and has never heard of any adverse claim by reason of prior discovery or otherwise, and every applicant shall within sixty days pay in to the Department of Crown Lands one-fourth of the purchase price or rental, and within three months the remaining three-fourths, the time to be reckoned from the date on which the application has been filed in the Department, and in case of failure in respect of any of these requirements the application shall lapse and be of no effect: Provided, however, that in no case shall a patent or lease for a location in unsurveyed territory issue until a survey has been filed as required by [the next preceding section,]² and that in the case of locations in surveyed townships the time for completing all requirements on the part of an applicant may be limited to thirty days at the discretion of the Commissioner of Crown Lands.

¹ Probably should be "section 26," which was added by 60 Vict. c. 8, s. 7, as s.-s. 2 of s. 11 of 55 Vict. c. 9, consolidated as section 26 of this Act.

² 60 Vict. c. 8, s. 7 (2).

29. No application for mining lands containing ores or minerals of the same class or kind¹ shall be entertained in any one calendar year from any person for more than three hundred and twenty acres, nor from any firm, partnership, syndicate or incorporated company for more than six hundred and forty acres, within a radius of fifteen miles² in any one district or county of the Province, and such areas may be composed of separate locations of not less than forty acres each; and in the event of an application lapsing or becoming abandoned, the applicant therefor may apply for other mining land in the same district or county in place thereof, but so as not to exceed the limit herein provided; and where a locality or territory is reported or shown to be rich in ores or minerals, the Commissioner of Crown Lands may still further limit applicants to one or more locations of forty acres, at his discretion. 60 Vict. c. 8, s. 7 (3).

¹ This limitation first introduced in 1897 by 60 Vict. c. 8, s. 7 (3).

² "Within a radius of 15 miles." There is no ruling of the Crown Lands Department as to the point from which the "radius of 15 miles" is to be measured, but it may be assumed that it would be the centre of the group of locations taken up by the applicant within the calendar year. The Commissioner has decided that "calendar year" means the interval between the 1st day of January and the 31st day of December (both inclusive) in a given year.

30. In the case of applications for mining lands made prior to the 13th day of April, 1897, and not prior to that day finally disposed of by the Commissioner of Crown Lands, the periods in which all requirements herein are to be completed shall date from the said 13th day of April; and in all other respects the provisions of sections 27, 28 and 29 shall apply, except in cases where the surveys for the lands had prior to the said day been made and filed, or at least one-half of the purchase money paid thereon, in which cases the periods of time mentioned in section 28 shall be deemed to run from the said 13th day of April. 60 Vict. c. 8, s. 7 (4).

31. (1) The price per acre of all Crown lands to be sold as mining lands or locations in the Districts of Algoma, Thunder Bay, Rainy River and that part of the District of Nipissing which lies north of the French River, Lake Nipissing and the River Mattawa shall be:

- (a) If in a surveyed township and within six miles of any railway \$3 00
- (b) If elsewhere in surveyed territory 2 50
- (c) If within six miles of any railway but in unsurveyed territory 2 50
- (d) If situate elsewhere in unsurveyed territory 2 00

(2) The price per acre of all other Crown lands sold as mining lands or locations and lying south of the aforesaid lake and rivers shall be:

- (e) If in a surveyed township and within six miles of any railway \$2 00
- (f) If situate elsewhere 1 50

57 Vict. c. 16, s. 4, part.

(3) The price per acre for a patent of mining rights shall be half of the above rates. Order in Council dated 21st May, 1897.

32. ¹ A prospector or explorer² who is the first discoverer of valuable metals, ores or minerals shall be entitled, subject to the royalties provided by this Act, to a free grant of one location of forty acres

where the vein, lode or other deposit is not less than ³ ten miles from the nearest known mine, vein, lode or deposit of the same metal, ore or mineral respectively, and proofs of his being the first discoverer and of the distance from the nearest known occurrence of the same metal, ore or mineral shall be made by affidavit ⁴ to the satisfaction of the Commissioner of Crown Lands.⁵

¹ In the case of a patent, grant or lease issued between 14th April, 1892, and the 13th April, 1897, wherein the prospector or explorer is described as "the original discoverer," etc., there is by virtue of 55 Vict. c. 9, s. 4, s.-s. 3, an exemption from paying royalty on any part of the ore, produce, or profit of such mine for 15 years from the date of the patent, grant or lease.

² By R. S. O. (1897) c. 46, s. 14, mining, exploration or prospecting for minerals within Algonquin Park is prohibited except under, and in accordance with, the provisions of the regulations to be made in that behalf.

³ Sub-section 3 of section 4 of 55 Vict. c. 9, was repealed by 60 Vict. c. 8, s. 3, and the above substituted. See *Hallyman v. Noonan*, 1876, 1 App. Cas. 575.

⁴ For form of affidavit, see Appendix II.

⁵ 60 Vict. c. 8, s. 3.

33. ¹ Where a part or section of the Province is shown or reported to be rich in ores or minerals, the Lieutenant-Governor in Council may withdraw the whole or a portion thereof from sale or lease, and set the same apart pending an exploration thereof or the prospecting of veins, lodes, or other deposits of ores or minerals therein by the use of a diamond drill or otherwise, under the direction of the Commissioner of Crown Lands and may fix the price per acre at any greater sum than is hereinbefore provided, or may offer the same for sale at public auction, on such terms and conditions as may be fixed by Order in Council.² 60 Vict. c. 8, s. 8.

¹ Derived from 54 Vict. c. 8, s. 1 (3), which was consolidated in 1892 as 55 Vict. c. 9, s. 12 (3), which was repealed by 57 Vict. c. 16, s. 4.

² *Quære*, whether it is necessary "such terms and conditions" must be set forth in the same Order in Council which withdraws lands.

CONDITIONS ON WHICH LOCATIONS TO BE HELD.

34. (1) The grantee or owner of any mining location sold and patented under section 31 shall, during the seven years immediately following the issue of the patent therefor, expend in stripping or in opening up mines, in sinking shafts or in other actual mining operations, exclusive of all houses, roads and other like improvements, a sum not less than at the rate of \$1 per acre during the first two years, and

a sum not less than at the rate of \$1 per acre during each remaining year of the said seven years, and the said expenditure may consist of labor actually performed by grown men to be computed at the rate of \$2 per man per day; but if two or more locations are contiguous, the whole of the mining work herein required may be done upon one of them.¹

(2) In default of such expenditure during the first two years or during any subsequent year of the said period of seven years, all rights connected with any such mining location, shall upon an order in that behalf being made by the Lieutenant-Governor in Council, upon the report of the Director of the Bureau of Mines that such expenditure has not been made, revert to, and be vested in Her Majesty, her successors and assigns, for the public uses of the Province, freed and discharged of any interest or claim of any other person or persons whatsoever.²

¹ 54 Vict. c. 8, s. 2, s.-s. 1, contains provision requiring the expenditure of \$4 per acre where patent exceeded 160 acres during the first seven years, and where less than 160 acres, \$5 per acre during first seven years. This was repealed by 60 Vict. c. 8, s. 9, which substituted therefor the above.

² 60 Vict. c. 8, s. 9.

35. (1) Instead of granting any mining lands in fee simple the same may be leased or demised for a term of ten years, with the right of renewal for a further term of ten years at the same rental if the covenants and conditions have been performed and fulfilled.¹

(2) Unless otherwise provided by regulation, the rental for the first year shall be one dollar per acre, and for each year thereafter the sum of twenty-five cents per acre payable in advance, in respect of lands within the territory designated in the first subsection of section 31 of this Act; and sixty cents per acre the first year, and thereafter for each year fifteen cents per acre, payable in advance, in respect of lands situate elsewhere.

(3) Such lease may at the expiration of the second term, if the covenants and conditions thereof have been performed and fulfilled, be renewed for a term of twenty years on such conditions and at such rent as the regulations shall provide, and may in like manner and subject to the like conditions be renewed from time to time at the expiration of every twenty years.²

(4) Every such lease shall be subject to such covenants and conditions on the part of the lessee, his executors, administrators and assigns, to be paid, observed and performed, as shall be provided by regulation.

(5) ³ The said lease may among other things provide for the removal, in case of forfeiture or non-renewal of the lease, of any mining plant ⁴ and machinery which the lessee, his executors, heirs and administrators shall have placed or erected upon the said premises.

(6) There shall be expended in stripping ⁵ or in opening up mines or in sinking shafts or in other actual mining operations ⁶ the like sums upon lands leased under the provisions of this Act as it is provided by section 34 hereof shall be expended in the case of sales or grants and within the like periods, and in default of such expenditure the lease shall be forfeited ⁷ and become absolutely void, and the said lands, mines and minerals shall upon an order in that behalf being made by the Lieutenant-Governor in Council, upon the report of the Director of the Bureau of Mines that such expenditure has not been made, revert to and become the property of and be vested in Her Majesty, her successors and assigns, and shall cease to be the property of any other person or persons whatsoever.⁸ 55 Vict. c. 9, s. 14.

(7) When mining rights ⁹ are leased the rental shall be fifty per cent. of the rates fixed by sub-section 2.¹⁰

¹ Power to lease first given in 1891, by 54 Vict. c. 8, s. 5.

² The right of renewal is recognized, but the conditions and rentals are to be determined from time to time by regulation.

³ Note that "assigns" not provided for.

⁴ As to "plant," see *Middleton v. Flanagan*, (1894) 25 O. R. 417.

⁵ "Stripping the vein" is defined in *Ure's Dictionary of Arts*, etc. (1860) Vol. III., p. 146, as follows: "Should the vein be very narrow, it is necessary to remove a portion of the sterile rock which encloses it, in order to give the work a sufficient width to enable the miner to advance. If in this case it be quite distinct from the rock, the labour may be facilitated as well as the separation of the ore by disengaging the vein, on one of its faces through a certain extent, the rock being attacked separately. This operation is called stripping the vein."

⁶ As to "actual," see *Gillard v. Bollert*, (1883) 24 O. R. 147; *Black v. Toronto U. Co.*, (1888) 15 O. R. 642; *Hogaboom v. Graydon*, (1894) 26 O. R. 298; *Re Monteith, Merchants Bank v. Monteith*, (1885) 10 O. R. 529; *Hoggan v. Esquimault & Nanaimo R. W. Co.*, (1891) 20 S. C. R. 235; affirmed P. C. 23, *Can. Gaz.* 129. As to "operation," see *Sage v. Township of West Oxford*, (1892) 22 O. R. 678.

⁷ The law appears to be that if the reversioner, with knowledge of the accrual of the forfeiture, does anything thereafter which admits the subsequent continuance of the tenancy, such action on his part constitutes a waiver. *Jones v. Carter*, (1846) 15 M. & W. 718; *Doe v. Birch*, (1836) 1 M. & W. 406; *Dendy v. Nicholl*, (1858) 4 C. B. N. S. 376.

And this appears to apply to acts of Ministers and officers of the Crown representing the Crown. See *Holland v. Ross*, (1890) 19 S. C. R. 566; see *Peterson v. The Queen*, (1889) 2 Ex. Ct. Rep. 67, judgment Burbridge, J., at p. 74; *Attorney-General v. John Ettershank*, (1875) L. R. 6 P. C., 354, distinguishing *Keating v. Sparrow*, 1 Bell v. Beattie, Ir. Ch. Rep. 367; *Davenport v. The Queen*, (1877) L. R. 3 App. Cas. 115; see p. 132 (per Sir Montague E. Smith): "Where money is paid and received as rent under a lease, a mere protest that it is accepted conditionally and without prejudice to the right to insist upon a prior forfeiture, cannot countervail the fact of such receipt"; but the receipt of rent is not a waiver of a forfeiture, unless it be of rent due on a day after the forfeiture was incurred. See *Pollock, C. B., and Martin, B., in Price v. Worwood*, (1859) 4 H. & N. 512; *Roberts v. Davey*, (1833) 4 B. & Ad. 664; *Doe v. Banks*, (1833) 4 B. & Ad. 401; *Dumpor's Case*, 1 Sm. L. C. 41 and notes; *Croft v. Lumley*, (1857) 6 H. L. C. 672; *Pennant's Case*, 3 Rep. 64a. In Australia, it was held in *Barwick v. Duchess of Edinburgh Co.*, 8 V. L. R. (Eq.) 70; 3 A. L. T. 68, 121, by the full Court that the Crown not having re-entered or taken possession where there was a proviso for forfeiture in case of breach of covenants, and a Gazette notice declaring forfeiture for breach of labour covenants, that a company which had taken possession of the land under miner's rights, subsequently to the declaration of forfeiture, were trespassers and liable to account to the lessee for the amount of gold raised. See also *Weddell v. House*, 8 V. L. R. (M.) 44; 4 A. L. T. 95.

⁸ The Crown is under no obligation to claim the forfeiture. *James v. Young*, (1884) 27 Ch. Div. 652.

⁹ For definition of "mining rights," see section 2, sub-section 6.

¹⁰ Order in Council, dated 21st May, 1897.

36. If default is made by the lessee in the payment of rent ¹ the lease shall be forfeited, but the lessee may defeat the forfeiture ² by payment of the full amount of rent within ninety days from the day when the same becomes payable; but unless the whole of the rent is paid within ninety days from the said day the lease shall be absolutely forfeited and void, any statute, law, usage or custom to the contrary notwithstanding, and all claims of any and every kind of the lessee or his assigns shall from and after such period forever cease and determine.³

¹ It has been decided in New Zealand that where a lease is authorized by statute, and a statutory rent reserved, payment of such rent may be enforced against the lessee by action though the lease does not contain a covenant to pay rent, and that in such action it cannot be set up, as a defence, that the lease has become liable to forfeiture. The Commissioner of Crown Lands, Otago District, v. Guffie, (1892) 11 N. Z. L. R. 187.

² In *Natal v. Behrens*, (1889) 14 App. Cas. 336, Lord Watson says: "Where the Crown has lawfully resumed possession of Crown lands alienated to a subject by virtue either of a reservation in the original

grant or of legislative authority subsequently obtained, the right of a subject is *pro tanto* extinguished and his interest reverts to the title of the Crown."

² 55 Vict. c. 9, s. 16.

37. (1) Upon the failure of any one or more of several co-owners or co-lessees of a location to contribute his or their proportion of the expenditures¹ or of the rental necessary to hold such location, the co-owners or co-lessees who have performed the labor or made the improvements or paid the rent as required by the provisions of this Act may at the expiration of the year² give such delinquent co-owner or co-lessee,³ or his personal representative in case of death, personal notice in writing, or notice by registered letter addressed to his last known place of abode calling upon him to make the necessary payment;⁴ and if upon the expiration of three calendar months from such notice,⁵ the delinquent co-owner or co-lessee or his said representative shall have failed to contribute his proportion to meet such expenditures or improvements or rental as the case may be, upon report thereof by the Director of the Bureau of Mines, the Commissioner of Crown Lands may order that his interest⁶ in the location shall become the property of and be vested in his co-owners or co-lessees who have made the expenditures or improvements⁷ or paid the rent overdue⁸ as aforesaid, and the same shall vest in such co-owners or co-lessees accordingly; or if the Commissioner thinks fit to refer the matter to the High Court,⁹ the Court shall have authority to make the like order.

(2) In case of the death of such person either before or after default in respect of his share, and no person has taken out administration to his estate or has obtained probate of his will, the notice provided for in the preceding sub-section may be given to the heirs.¹⁰ of such person. 60 Vict. c. 8, s. 10.

¹ "Expenditures" would include the expenditures upon land sold and patented, provided for by section 34, sub-section 1, and for lands leased, provided for by section 35, sub-section 6.

² Probably refers to the period specified in section 34.

³ The singular here includes the plural. See "The Interpretation Act," R. S. O. 1897, c. 1, s. 8, s.-s. 24.

⁴ "Payments," *Quære*, as to payments of what, and to whom. It probably means payment by the defaulting person of his contribution to the person who has performed the labour, or made the improvements, or paid the rental. No more can be demanded than the amount necessary to hold the location.

⁵ "Notice" herein provided for would date from the personal service or the mailing of the registered letter properly addressed.

⁶ "His interest" would probably be held to be taken subject to any encumbrances thereon. *Quære* as to executions.

⁷ "Improvements." *Quære*, what improvements, as no improvements are necessary to hold location.

⁸ The rental is, by section 35, sub-section 2, made payable in advance each year of the term. It is therefore overdue if not paid on the first day of the year. By section 36, 90 days of grace are given, but if the rental is not paid within said 90 days, the consequence is, by section 36, "absolute" forfeiture.

⁹ "High Court" probably means High Court of Justice for Ontario, but is not defined.

¹⁰ "Heirs." *Quære*, who would be included, and whether in case of leasehold it would mean next of kin. There is no special provision as to service upon infants, persons *non compos mentis*, etc., how served. There is no provision for serving an "heir" by registered letter, therefore personal service would be required.

38. The lessee¹ may at any time during the demised term, upon the payment of all rent due and the performance and fulfilment of all other covenants and conditions, become the purchaser² of the lands demised to him, and in such case the sum paid for the first year's rental shall be treated as part of the purchase money. 55 Vict. c. 9, s. 15.

¹ "Lessee." *Quære*, whether assigns included, also execution creditors.

² *Fisher v. Tully*, (1878) 3 App. Cas. 627, was a decision of the Privy Council on appeal from the Supreme Court of Queensland.

In a suit by the appellant praying for a declaration that a valid and binding statutory engagement subsisted between the Government and himself for the grant in fee simple of certain land which had been previously leased to him, and further praying that the Government might be decreed to issue a deed of grant to him, it appeared that the appellant had complied with the condition of section 51, sub-sections 6 and 7 of the Queensland Alienation Act of 1868 (which provides for an acceleration of the right to the grant in fee), but that the declaration that he lived in Queensland, made on his application for the lease, was untrue to his knowledge.

Held, that the Government was right in withholding the grant; the declaration formed one basis on which the contract was founded, and there was no evidence that the Government knew it to be untrue, either at the time the lease was granted or when the rents were received.

RESERVATION OF TIMBER.

39. (1) The patents for all Crown lands sold as mining lands shall contain a reservation of all pine trees standing or being on the lands, which pine trees shall continue to be the property of Her

Majesty, and any person holding a license to cut timber or saw-logs on such lands may at all times during the continuance of the license enter upon the lands and cut and remove such trees and make all necessary roads for that purpose.¹

(2) The patentees or those claiming under them (except patentees of mining rights hereinafter mentioned) may cut and use such trees as may be necessary for the purpose of building, fencing and fuel on the land so patented, or for any other purpose essential to the working of the mines thereon, and may also cut and dispose of all trees required to be removed in actually clearing the land for cultivation.

(3) No pine trees, except for the said necessary building, fencing and fuel, or other purpose essential to the working of the mine, shall be cut beyond the limit of such actual clearing; and all pine trees so cut and disposed of, except for the said necessary building, fencing and fuel, or other purpose aforesaid, shall be subject to the payment of the same dues as are at the time payable by the holders of license to cut timber or saw-logs.²

¹ Almost identical with 32 Vict. c. 34, s. 12.

² 55 Vict. c. 9, s. 17.

40. The preceding section shall apply to all leases issued under this Act, other than leases of mining rights hereinafter mentioned, with the following limitations and variations, that is to say—

1. No pine trees shall be used for fuel other than dry pine trees, and (except for domestic or household purposes) only after the sanction of the timber licensee or the Department of Crown Lands is obtained.

2. In case it is intended to clear for cultivation any portion of the lands so leased it shall be the duty of the lessee to give the holder of the timber license three months' notice in writing of his intention to clear, and the area intended to be cleared, and its position, so that such timber licensee may remove any timber on the area intended to be cleared.

3. If at the expiry of the time limited by the notice such timber shall not have been removed from the area intended to be cleared, then the lessee shall be at liberty to cut and dispose of all trees required to be removed in actually clearing for cultivation the area specified in such notice, and all trees so cut and disposed of shall be subject to the payment of the same dues as are at the time payable by the holders of licenses.

4. If during the first ten years it is sought to cut timber, other than pine, on the lands so leased, beyond what is required for building, fencing, or fuel, or in the course of actual clearing for cultivation, or for any other purpose essential to the working of the mines as hereinbefore provided, application shall first be made to the Commissioner of Crown Lands, who may grant authority to cut such timber and fix the rate of dues to be paid thereon.¹

¹ 55 Vict. c. 9, s. 18.

SURFACE RIGHTS¹ AND MINING RIGHTS.

41. The ores, minerals and mining rights² that have [in the patents]³ been reserved to the Crown in any land may be granted⁴ or leased to the owner of the surface rights who applies therefor, unless a patent or mining lease has been previously applied for by a person who is the first discoverer of valuable ore or mineral in or upon the premises, when such applicant shall have priority. 60 Vict. c. 8, s. 11.

¹ "Surface rights" are defined by section 2, sub-section 5.

² For definition of "mining rights," see section 2, sub-section 6.

³ Inserted by commissioners in consolidation.

⁴ If the grant is made for a specific purpose, it carries with it by implication, in the absence of a contrary intention appearing on its face, the right of reasonable and necessary support for the works to be erected from the subjacent or adjacent lands of the grantor; see *L. & N. W. R. Co. v. Evans*, (1892) 1 Ch. 27; *Elliot v. N. E. R. Co.*, (1863) 10 H. L. C. 433, 357; *Caledonian Ry. Co. v. Sprot*, (1856) 2 Macq. 450. As to support see Chapter IX.

42. (1) ¹ Where the surface rights² have been granted, leased or located,³ and a patent or lease of mining rights shall thereafter be granted in respect of the same land, in the event of the parties failing to agree upon compensation⁴ for injury or damage to the surface rights either in the form of a specified interest in the mineral rights or ore or mineral, to be secured to the owner of the surface rights, or by payment or agreement to pay in money, or the giving of security, the Director of the Bureau of Mines shall order and prescribe the manner in which compensation for the damage or injury to the surface and surface rights shall be ascertained, paid or secured.⁵

(2) For the purposes aforesaid the said Director is empowered to appoint a valuator or valutors, arbitrator or arbitrators, who shall have all the powers⁶ for the purposes for which he or they shall be appointed of an arbitrator or arbitrators under any Act of the

Legislature, or he may direct that such compensation shall be ascertained by suit or action in any County or District Court.⁷

⁷ First introduced in 1892 by 55 Vict. c. 9, s. 20.

⁸ For definition of "surface rights," see section 2, sub-section 5.

⁹ See sections 5, 6, 7, and 8 of the "Free Grants and Homesteads Act."

⁴ See *Great Laxey Mining Co. v. Clague*, (1878) 4 App. Cas. 115, where Sir Robert Collier in delivering the judgment of the Privy Council, at p. 120 says: "That compensation has been assessed by a competent tribunal once for all, which puts the plaintiff in as good a position as if the damage of which he complains had never been done. After receiving that compensation, he will have no right of action for any subsequent damage he may suffer from the same cause."

⁵ In *Midland Railway Co. v. Checkley*, 1867, L. R. 4 Eq. 19, Romilly, M.R., says, p. 25: "Stone is, in my opinion, clearly a mineral; in fact, everything except the mere surface, which is used for agricultural purposes; anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fireclay or the like, comes within the word mineral when there is a reservation of the mines and minerals from a grant of land."

⁶ See "The Arbitration Act," R. S. O. (1897) c. 62, which, by section 47, applies to every arbitration under the Mines Act.

⁷ 55 Vict. c. 9, s. 20.

43. No person shall have the right of entry as prospector or explorer upon the surface rights of that portion of any lot used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops that may be damaged by such entry are growing, or on which is situated any spring, artificial reservoir, dam or waterworks, or any dwelling-house, out-house, manufactory, public building, church or cemetery, unless with the written consent of the owner, lessee or locatee or of the person in whom the legal estate therein is vested.¹

¹ 55 Vict. c. 9, s. 21.

PART III.—MINING CLAIMS.

MINING DIVISIONS.

44. ¹ The Lieutenant-Governor in Council may from time to time by Order in Council declare any tract of country² therein described to be a mining division; and by any subsequent Order in Council may from time to time extend, add to or diminish the limits of the division, or may otherwise amend any such Order in Council, or may cancel the same; and from and after the publication in the

Ontario Gazette of an Order in Council declaring a tract of country to be a mining division, a mining division therein mentioned and described and all mines on Crown lands³ situate in the division shall be subject to the provisions of this Act, and to any regulations to be made under this Act.⁴

¹ Derived from 27-28 Vict. c. 9, s. 2, and 32 Vict. c. 34, s. 13.

² The first and only mining division yet declared is the Michipicoton Division. For Orders in Council and Regulations see Appendix I. See and consider section 10, *supra*.

³ See section 2, sub-section 4.

⁴ 55 Vict. c. 9, s. 24.

MINER'S LICENSE.

45. [(1) On payment of a fee of \$10, or such other sum as may be fixed by regulation, the Director of the Bureau of Mines (or the Inspector of a division when so authorized by the Commissioner of Crown Lands) may grant to any person, registered partnership, or mining company incorporated under the laws of the province applying therefor a license to be called a "miner's license," which shall be in force for one year from the date thereof, and shall not be transferable except with the consent of the Director of the Bureau or the Inspector of the division.

(2) The person, partnership or company named in a license shall be called the "licensee," and upon payment of the fee fixed by law or regulation, and production of proof under oath that the mining conditions have been duly performed upon the claim or claims staked out and held, such licensee shall have the right to renewal if application is made therefor before the expiration of the license or within ten days thereafter.

(3) A miner's license may be in the following form:

Province of Ontario.		
No.	(Name of Division) Mining Division.	\$.....
Bureau of Mines.	(Date)	18
Miner's License.		
Issued to A. B., in consideration of the payment of a fee of		
dollars, under the provisions of the Mines Act, to be in force for one year		
from the date hereof.		

C. D.,

Director.]¹

¹ This section was substituted by 61 Vict. (1898) c. 11, s. 8, for R. S. O. (1897) c. 36, s. 52, which was thereby repealed.

46. A miner's license shall authorize the licensee ¹ [to explore any portion of the mining division named in his license and] ² to mine during one year from the date of the license and from the date of any renewal thereof, on any mining claim marked or staked out by such licensee on Crown lands, as hereinafter provided; but any person ³ may be employed by the licensee to assist him in working such claim [or the licensee may organize a company to work the same ⁴], [and in either case the working conditions shall be deemed to be complied with when the equivalent of one man's labor for the year in actual mining has been performed as hereinafter required.] ⁵

¹ "Personally and not through another," struck out by 61 Vict. (1898) c. 11, s. 2.

² Inserted by 61 Vict. (1898) c. 11, s. 2.

³ "Or persons not occupying any other mining claim," struck out by 61 Vict. (1898) c. 11, s. 2.

⁴ 55 Vict. c. 9, s. 30; 57 Vict. c. 16, s. 5.

⁵ Inserted by 61 Vict. (1898) c. 11, s. 2.

STAKING OUT AND HOLDING MINING CLAIMS.

47. A licensee who discovers ¹ a vein, ² lode ³ or other deposit of ore ⁴ or minerals, ⁵ [in place], ⁶ within the division mentioned in his license, shall have the right to mark or stake out thereon a mining claim, providing that it is on Crown lands not withdrawn from location or exploration and is not included in a claim occupied ⁶¹ by another licensee, or on lands the mines, minerals and mining rights ⁷ whereof have been reserved by the Crown, and shall have the right to work the same or to transfer ⁸ his interest therein to another licensee; and in case the surface rights have been granted, leased or located by the Crown to another person, the licensee must proceed as provided in section 42 of this Act. 60 Vict. c. 8, s. 14 (1).

¹ Discoverer was formerly defined by 55 Vict. c. 9, s. 40, which appears to have been dropped in the consolidation, though it had not been expressly repealed; see also s. 32, *infra*.

² "Vein," see Appendix III.

³ "Lode" (*ib.*).

⁴ "Ore" (*ib.*).

⁵ "Mineral." As to meaning of word, see Chapter II.

⁶ Inserted by 61 Vict. (1898) c. 11, s. 3.

⁶¹ Read with sections 51 and 52, *infra*.

⁷ See section 10, *supra*.

⁸ For form of Transfer see Appendix II.

(2) [If the working conditions have been complied with as hereinafter required, for a period of three years, on a claim of 20 chains square, or for two years on a claim of 15 chains square or less, or

when the equivalent of such working conditions has been complied with in a less period of time in the respective cases, the licensee may apply for and obtain a patent or lease for a line embraced in the claim, free from any further working conditions, upon a survey thereof, being made and filed according to section 27 of The Mines Act, R. S. O. 1897, and upon payment therefor to the Department of Crown Lands of the purchase price, or first year's rental at a rate per acre, as provided in sections 31 and 35 respectively of the said Act; and the time when the royalties may begin to be imposed or collected upon ores and minerals mined, wrought or taken from a claim, so patented or leased, shall be reckoned from the date of recording such claim in the Inspector's office.] ¹

¹ Added by 61 Vict. (1898) c. 11, s. 3.

48. A mining claim shall be deemed to be marked or staked out when a discovery post of wood or iron on which is written or stamped the name of the licensee is planted upon an outcropping or other indication of ore or mineral [in place] ¹ within the boundaries of the said claim, and a post of wood or iron is planted at each of the four corners in the order following, viz.: No. I. at the northeast corner, No. II. at the southeast corner, No. III. at the southwest corner and No. IV. at the northwest corner, the number in each case to be on the side of the post turned towards the post which follows in the order in which they are named; and if one or more corners of a claim fall in any situation where the nature or shape of the ground renders the planting of a post or posts impracticable, such corner or corners may be indicated by placing at the nearest suitable point a witness post, which in that case shall contain the same marks as those prescribed herein for corner posts together with the letters W. P. and an indication of the bearing and distance of the site of the true corner from such witness post. ²

(2) [Where there are standing trees upon a mining claim, so staked out, the licensee shall be required to blaze the trees, and cut the underbrush along the boundary lines of the claim, and also along a line from the first corner post to the discovery post.] ³

¹ Inserted by 61 Vict. (1898) c. 11, s. 4.

² 60 Vict. c. 8, s. 14 (2).

³ Added by 61 Vict. (1898) c. 11, s. 4.

49. No more than one claim shall be staked out by any individual licensee upon the same vein, lode or deposit of ore or mineral, unless such claim is distant at least ¹ [sixty chains] ² from the nearest

known mine, [claim] ³ or discovery on the same vein or lode, [but no licensee shall stake out and record in the same mining division, within a radius of fifteen miles, more than four claims in one calendar year, and for each additional claim after the first staked out and held by him, he shall pay a fee of \$10 a year in advance, or such other sum as may be fixed by regulation.⁴] ⁵

¹ "Three miles," struck out by 61 Vict. (1898) c. 11, s. 5.

² Inserted by 61 Vict. (1898) c. 11, s. 5.

³ Inserted by 61 Vict. (1898) c. 11, s. 5.

⁴ Added by 61 Vict. (1898) c. 11, s. 5.

⁵ Section 37 of 55 Vict. c. 9, ss. 37 and 39, are repealed by 60 Vict. c. 8, s. 17.

50. (1) A mining claim shall be a square of fifteen chains, or 990 feet, containing twenty-two and one-half acres; [or of such other extent, greater or less, as may be fixed by regulation for any mining division, but so as not to exceed a square of twenty chains or 1,320 feet, containing forty acres.] ¹

(2) Each mining claim shall be laid out with boundary lines running north and south and east and west astronomically, and the measurements of each claim shall be horizontal, and the ground included in each claim shall be deemed to be bounded under the surface by lines vertical to the horizon.

(3) A valuable water power ² lying within the limits of a claim shall not be deemed as part of it for the uses of the licensee.³

¹ Added by 61 Vict. (1898) c. 11, s. 6.

² Inspectors have authority under section 24 to settle disputes as to the use of water between licensees; see also No. 6 of Regulations. No test is given for determining what water powers are "valuable."

³ 60 Vict. c. 8, s. 14 (4).

51. (1) [Every Inspector appointed under this Act shall keep a book for the recording therein of mining claims, which book shall be open to inspection by any person on payment of a fee of twenty cents; and every licensee who has marked or staked out a mining claim under this Act shall within thirty days thereafter] ¹ [supply (under oath) ² to the Inspector of the division an outline sketch or plan thereof showing the discovery post and the corner posts, and the witness posts (if any), and their distances from each other in feet, together with a notice in writing setting forth the name of the licensee and the number of his license, the name (if any) of the claim and its locality as indicated by some general description or statement, the time when the same was marked or staked out, the length of the boundary lines if for any cause they are not regular and the nature

of such cause, the situation of the discovery post as indicated by distance and direction from the first corner post,³ and the date of the record, and the Inspector shall forthwith enter the particulars of the notice in his book and shall file the notice and sketch or plan with the records of his office.]⁴

(2) If the licensee fails [to comply with the provisions of this section so far as the same relate to him]⁵ [or if having complied with them, he or any person in his behalf shall remove any post for the purpose of changing the boundaries after the plan and notice have been filed],² the mining claim so marked or staked out shall be deemed to be forfeited and abandoned, and all right of the licensee therein shall cease.⁶

¹ "Give notice thereof in writing to the Inspector of the division, stating the name of the licensee, and indicating by some general statement therein the locality of the mining claim, and showing how and when the same was marked or staked out, and the Inspector shall thereupon forthwith record the particulars thereof in the book," appear in the Act 55 Vict. (1892) c. 9, s. 34, but were struck out in 1897 by 60 Vict. c. 8, s. 15.

² Inserted by 61 Vict. (1898) c. 11, s. 7.

³ "The time when the claim was marked or staked out" appear in the Act, 60 Vict. (1897) c. 8, s. 15, but were omitted in the consolidation of 1897.

⁴ 60 Vict. c. 8, s. 15.

⁵ Inserted by Commissioners in lieu of "give notice to the inspector within the time aforesaid."

⁶ 55 Vict. c. 9, s. 34; 60 Vict. c. 8, s. 15, and c. 3, s. 3.

52. [(1) A mining claim shall also be deemed to be forfeited and abandoned and all right of the licensee therein shall cease in case ¹ the miner's license has run out and has not been renewed, or if the annual fee for a claim has not been prepaid, or if actual mining operations shall not be carried on upon each claim taken up except as hereinafter in this section provided for at least five months of one man's time, or an equivalent if more than one man is employed on the same claim, in every calendar year.

(2) Provided, furthermore, that for every four claims or less held by the same licensee, or by different persons agreeing to combine their mining operations, within a radius of one mile, all such mining operations may be carried on upon one of the claims; but notice of an intention to carry on such operations must be filed with the Inspector, and a record ² of all mining operations carried on by a licensee during his license year verified by oath shall be filed with the Inspector, who shall enter an abstract thereof in his book.

(3) A licensee may at any time abandon a mining claim by giving notice in writing to the Inspector of the mining division of his intention so to do, and from the date of the record of such notice in the Inspector's book all interest of the licensee in such claim shall cease.]³

¹ In 55 Vict. c. 9, s. 35, s.-s. 1, here follow the words "annual rent thereof at the rate of \$1 per acre has not been prepaid, or if."

² 60 Vict. c. 8, s. 16, required the report to be monthly.

³ This section was substituted, by 61 Vict. (1898) c. 11, s. 8, for R. S. O. (1897) c. 36, s. 52, which was thereby repealed.

53. No mining claim within a division shall be considered unworked within the meaning of the preceding section during the time that an order in Council directs that work on mining claims within such mining division may be suspended.¹

¹ 55 Vict. c. 9, s. 36.

54. Every licensee shall produce and exhibit his license to the Inspector for the division, and prove to the satisfaction of the Inspector that it is in force, whenever required by him so to do.¹

¹ 55 Vict. c. 9, s. 38.

55. A party wall of at least fifteen feet thick¹ shall be left between adjoining claims on Crown lands, which party wall shall be used in common by all parties as a roadway for all purposes for which the same may be required and as a mode of access to the stream, lake or pond, where one exists; and the party wall shall not be obstructed by any person throwing soil, stone or other material thereon; and every person so obstructing the party wall shall be liable to a fine of not more than \$5 and costs; and in default of payment of the fine and costs, to be imprisoned for any period not exceeding one month.²

¹ See section 56, *infra*, which appears to contemplate that each owner of adjoining claims shall leave 7½ feet for the party wall.

² 55 Vict. c. 9, s. 41; 60 Vict. c. 8, s. 18.

56. If at any time it is found necessary or expedient to remove a party wall as aforesaid, the person so removing it shall, if required so to do, construct a new roadway in no wise more difficult as an approach than the one destroyed by the removal of the party wall, under a like penalty as provided in the next preceding section; and in case of a removal of a party wall the minerals found therein shall belong to the owners of the adjoining claims, each of whom shall own the half next his claim.¹

¹ 55 Vict. c. 9, s. 42; 60 Vict. c. 8, s. 19.

57. No person mining upon Crown lands shall cause damage or injury to the holder of any claim other than his own by throwing earth, clay, stones or other material upon such other claim, or by causing or allowing water¹ which may be pumped or baled or may flow from his own claim to flow into or upon such other claim, under a penalty of not more than \$5 and costs, and in default of payment of the fine and costs he may be imprisoned for any period not more than one month.²

¹ See Chapter X., *infra*.

² 55 Vict. c. 9, s. 43.

ACT RESPECTING RIOTS NEAR PUBLIC WORKS.

58. (1) The Lieutenant-Governor in Council may, as often as occasion requires, declare by proclamation that he deems it necessary that *The Act respecting Riots near Public Works*¹ shall, so far as the provisions therein are applicable, be in force within any mining division or divisions; and upon, from and after the day to be named in any such proclamation, section 1 and sections 3 to 11 inclusive of the said Act shall, so far as the provisions thereof can be applied therein, take effect within the mining division or mining divisions designated in the proclamation; and the provisions of the said Act shall apply to all persons employed in any mine, or in mining within the limits of such mining division or divisions, as fully and effectually to all intents and purposes as if the persons so employed had been specially mentioned and referred to in the said Act.

(2) The Lieutenant-Governor in Council may in like manner from time to time declare the said Act to be no longer in force in such mining division or divisions; but this shall not prevent the Lieutenant-Governor in Council from again declaring the said Act to be in force in any such mining division or mining divisions; but no such proclamation shall have effect within the limits of any city.²

¹ R. S. O. (1897) c. 38. "Act respecting Riots," 1864, c. 9, s. 32, and s.-ss. 2 and 3, is in effect the same, except reading "Governor" for "Lieutenant-Governor," and "Gold Mining Divisions" instead of "Mining Divisions," and changing the authorities there cited.

² 55 Vict. c. 9, s. 47.

PART IV.—MINING REGULATIONS.

APPLICATION OF PART.

59. This Part ¹ shall apply to all mines, quarries and pits, and to oil, gas and salt wells, and other openings from which ores or minerals of any kind or class are raised or taken, and to all furnaces or works for smelting or otherwise treating ores, rocks, clays, sands, oils, brines or other minerals for any economic object; and all owners ² or agents ³ of such mines, quarries, pits, wells, furnaces and works shall observe and keep the provisions of this Part, and in case of non-observance thereof shall incur the penalties provided therefor by section 80.⁴

¹ See "The Metalliferous Mines Regulations Act (Imp.), 1872," 35 & 36 Vict. (Imp.) c. 77; see also Chapter XVIII., *infra*.

² For definition of "owner," see s. 2, s.-s. 10.

³ For definition of "agent," see s. 2, s.-s. 11.

⁴ 1896, c. 13, s. 2, repeals section 7 of 1894, c. 16, and s. 53 of 1892, c. 9, and substitutes therefor the section as it appears in 1897. R. S. O. c. 36, s. 59.

EMPLOYEES.

60. No boy under the age of fifteen years shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground; and no girl or woman shall be employed at mining work or allowed to be for the purpose of employment at mining work in or about any mine.¹

¹ 55 Vict. c. 9, s. 54. Substantially the same (except as to age limit) as the Imperial Act, 50 & 51 Vict. c. 58, s. 4, which was identical with section 4 of the Act of 1872, 35 & 36 Vict. c. 76, except as to age.

61. (1) No boy or young male person of the age of fifteen and under the age of seventeen years shall be employed or allowed to be for the purpose of employment in any mine to which this Part applies below ground on Sunday or for more than forty-eight hours in any one week, or more than eight hours in any one day.

(2) The period of such employment, and the time during which any such boy or person may be below ground for the purpose of employment, shall respectively be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface.

(3) A week shall mean the period between midnight on Sunday night and midnight on the succeeding Saturday night.¹

¹ Section (Imp. Act) 50 & 51 Vict. c. 58, ss. 5, 6 and 75; 55 Vict. c. 9, s. 55; 60 Vict. c. 8, s. 22.

62. The owner or agent of every mine to which this part applies shall keep in the office at the mine, or in the principal office of the mine belonging to the same owner in the district in which the mine is situated, a register, and shall cause to be entered in such register the name, age, residence and date of the first employment of all boys or young male persons of the age of fifteen and under the age of seventeen years who are employed in the mine below ground, and shall produce such register to any Inspector at the mine at all reasonable times when required by him, and allow him to inspect and copy the same. The immediate employer of every boy or male young person of the age aforesaid, other than the owner or agent of the mine, before he causes such boy or male young person to be in any mine to which this part applies below ground, shall report to the owner or agent of such mine, or some person appointed by such owner or agent, that he is about to employ such boy or young male person in the said mine.¹

¹ 55 Vict. c. 9, s. 56.

63. Where there is a shaft, inclined plane, or level in any mine to which this part applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up, down or along such shaft, plane or level by means of any engine, windlass or gin, driven or worked by steam or by any mechanical power, or by an animal, or by manual labour, no person shall be allowed to have charge of such engine, windlass or gin, or of any part of the machinery, ropes, chains or tackle connected therewith, unless he is a male of at least twenty years of age. Where the engine, windlass or gin is worked by an animal, the person under whose direction the driver of the animal acts shall for the purposes of this section be deemed to be the person in charge of the engine, windlass or gin, and no person shall be employed as such driver who is under sixteen years of age.¹

¹ 55 Vict. c. 9, s. 57.

64. If any person contravenes any provision of the four next preceding sections of this Act, he shall be guilty of an offence against this Act, and in case of any such contravention, by any person whomsoever in the case of any mine, the owner and the agent of such mine shall each be guilty of an offence against this Act, unless such owner or agent proves that he had taken all reasonable means to prevent such contravention by publishing and to the best of his power enforcing the provisions of this Act.¹

¹ 55 Vict. c. 9, s. 58 (1).

65. If it appears that a boy or young person or any person employed about an engine, windlass or gin, was employed on the representation of his parent or guardian that he was of an age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner or agent of the mine and the immediate employer shall be exempted from any penalty, notwithstanding such boy or other person was not of an age at which his employment as aforesaid is authorized by this Act, provided such owner, agent or employer shall immediately upon discovery of the fact discharge such boy from such employment, but the parent or guardian shall for the misrepresentation aforesaid be deemed guilty of an offence against this Act.¹

¹ 55 Vict. c. 9, s. 58 (2); 60 Vict. c. 8, s. 23.

PAYMENT OF WAGES.

66. (1) No wages shall be paid to any person employed in or about any mine to which this part applies at or within any public house, beer shop or place for the sale of any spirits, wine, beer or other spirituous or fermented liquor, or other house of entertainment, or within any office, garden or place belonging or contiguous thereto or occupied therewith.

(2) Every person who contravenes, or permits any person to contravene this section shall be guilty of an offence against this Act, and in the event of any such contravention by any person whomsoever the owner and agent of the mine in respect of which the wages were paid shall each be guilty of an offence against this Act, unless such owner or agent proves that he had taken all reasonable means to prevent such contravention by publishing and to the best of his power enforcing the provisions of this section.¹

¹ 55 Vict. c. 9, s. 59.

ANNUAL STATISTICAL RETURNS.

67. (1) The owner or agent of every mine, quarry or other works to which this part applies shall on or before the 15th day of January in every year send to the Bureau of Mines a correct return for the year ending on the preceding 31st day of December, of the number of persons ordinarily employed in or about such mine below ground and above ground respectively, and distinguishing the different classes and ages of the persons so employed whose hours of labor are regulated by this Act, the average rate of wages of each class and the total amount of wages paid during the year, the quantity in standard weight of the mineral dressed, and of the undressed mineral

which has been sold, treated or used during such year, and the value or estimated value thereof; and the owner or agent of every metalliferous mine shall if required make similar returns at the end of each month or quarter of the calendar year for such month or quarter in order that the same may be tabulated for publication by the Director of the Bureau under the instructions of the Commissioner of Crown Lands.

(2) For the purpose of collecting the data of such statistics the Director of the Bureau of Mines shall prepare the required schedules in such form as he may from time to time deem desirable, and send the same by mail to be filled up and returned by the owner or agent of every such mine, quarry or works in the Province.¹

(3) Every owner or agent of a mine, quarry or other works who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against this Act.²

¹ 55 Vict. c. 9, s. 60 (1, 2); 59 Vict. c. 13, s. 3 (1); 60 Vict. c. 8, s. 24.

² 55 Vict. c. 9, s. 60 (3); 59 Vict. c. 13, s. 3 (2).

PREVENTION OF ACCIDENTS.

68. For the prevention of accidents where any mine has been abandoned or the working thereof has been discontinued, the owner or lessee, or other person interested in the minerals of the mine, shall cause the top of the shaft and all entrances from the surface, as well as all other pits and openings dangerous by reason of their depth, to be and to be kept securely fenced; and if any person fails to act in conformity with this section he shall be guilty of an offence against this part, and any shaft, entrance, pit or other opening which is not fenced as aforesaid shall be deemed to be a nuisance.¹

¹ Imp. Act, 50 & 51 Vict. c. 58, s. 37; 60 Vict. (O.) c. 8, s. 25.

GENERAL RULES.

69. The following general rules shall so far as may be reasonably practicable be observed in every mine to which this part applies:

1. An adequate amount of ventilation shall be constantly produced in every mine to such an extent that the shafts, winzes, sumps, levels, underground stables and working places of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.¹

2. Gunpowder, dualin, dynamite or other explosive or inflammable substance shall only be used underground in the mine as follows:

- (a) It shall not be stored in the mine in any quantity exceeding what would be required for use during six working days.
- (b) It shall not be taken for use into the workings of the mine except in a securely covered case or canister, containing not more than eight pounds.
- (c) A workman shall not have at any time at any place where the same is being used more than one such case or canister.
- (d) In charging holes for blasting, unless in mines excepted from the operation of this section by the Commissioner of Crown Lands, an iron or steel pricker shall not be used, and no person shall have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder.
- (e) A charge of powder which has missed fire shall not be unrammed.
- (f) A charge which has missed fire may be drawn by a copper pricker, but in no case shall any iron or steel tool be used for the purpose of drawing or drilling out a charge.¹

3. No gunpowder, dualin, dynamite or other explosive shall be used to blast or break up ore in roast heaps where by reason of the heated condition of such ore or otherwise there is any danger or risk of premature explosion of the charge.²

4. Every underground plane on which persons travel which is self-acting, or worked by an engine, windlass or gin, shall be provided at intervals of not more than twenty yards with sufficient man-holes for places of refuge, and every such plane which exceeds thirty yards in length shall also be provided with some proper means of signalling between the stopping places and the ends of the plane.³

5. Every road on which persons travel underground where the produce of the mine in transit ordinarily exceeds ten tons in any one hour over any part thereof shall be provided at intervals of not more than one hundred yards with sufficient spaces for places of refuge, each of which spaces shall be of sufficient length, and of at least three feet in width between the waggons running on the tramroad and the side of the road; and the Commissioner of Crown Lands may, if he

sees fit, require the Inspector to certify whether the produce of the mine in transit on the road aforesaid does or does not ordinarily exceed the weight as aforesaid, and such certificate shall be conclusive as to the matters therein stated.⁴

6. Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or in such space in such a position as to prevent convenient access thereto.⁵

7. ⁶ The top of every shaft which was opened before the commencement of the actual working for the time being of the mine and has not been used during such actual working shall, unless the Inspector otherwise permits, be securely fenced, and the top of every other shaft which for the time being is out of use, or used only as an air shaft, and all other pits or openings dangerous by reason of their depth upon which work has been discontinued, shall also be securely fenced.⁷

8. ⁸ The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

9. ⁹ Where the natural strata are not safe, every working or pumping shaft, adit, tunnel, drive, roadway or other workings shall be securely cased, lined or timbered, or otherwise made secure.

10. Every mine shall be provided with proper and sufficient machinery and appliances for keeping such mine free from water, the accumulation or flowing of which might injuriously affect any other mine.

11. Where one portion of a shaft is used for the ascent and descent of persons by ladders or by a man engine, and another portion of the same shaft is used for raising the material being mined, the first mentioned portion shall be cased or otherwise securely fenced off from the last mentioned portion.

12. ¹⁰ Every working shaft in which persons are raised which exceeds fifty yards in depth, shall, unless exempted in writing by the Inspector, be provided with guides and some proper means of communicating by distinct and definite signals from the bottom of the shaft, and from every entrance for the time being in work between the surface and the bottom of the shaft, to the surface, and also of

communicating from the surface to the bottom of the shaft, and to every entrance for the time being in work between the surface and the bottom of the shaft.

13. ¹¹ A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the Inspector.

14. ¹² A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load.

15. ¹³ There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances as may be sufficient to prevent the rope from slipping.

16. ¹⁴ There shall be attached to every machine worked by steam, water or other mechanical power, and used for lowering or raising persons, an adequate brake, and also a proper indicator (in addition to any mark on the rope) which will show to the person who works the machine the position of the cage or load in the shaft.

17. A proper footway or ladder, inclined at the most convenient angle which the space in which the ladder is fixed allows, shall be provided in every working shaft where no machinery is used for raising or lowering persons; and every such ladder shall have substantial platforms at intervals of not more than forty feet, and no such ladder shall be fixed for permanent use in a vertical or overhanging position unless in shafts used exclusively for pumping. In every mine in which vertical or overhanging ladders shall be in use in the shaft at the time these rules were first applied to it, such ladders may be retained if securely fixed platforms are constructed at intervals of not more than 30 feet from each other, and such ladders have sufficient spaces for footholds of not less than six inches.

18. If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine house or boiler house, for enabling the persons employed in the mine to conveniently dry and change their clothes.

19. ¹⁵ Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

20. ¹⁶ Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

21. ¹⁷ No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, brake, indicator, ladder, platform, steam-gauge, water-gauge, safety-valve, or other appliance or thing provided in any mine in compliance with this Act.

¹ See Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rule 12; 55 Vict. (O.) c. 9, s. 74 (1, 2).

² 57 Vict. c. 16, s. 10, part.

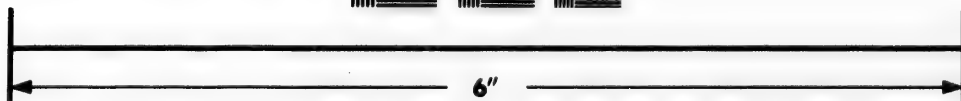
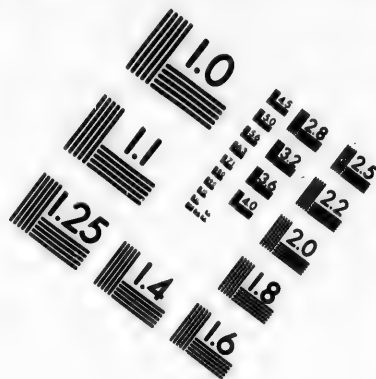
³ See Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rule 14; 55 Vict. (O.) c. 9, s. 74 (3).

⁴ See Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rule 15; 55 Vict. c. 9, s. 74 (4); 60 Vict. (O.) c. 8, s. 28, part.

⁵ See Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rule 16; 55 Vict. (O.) c. 9, s. 74 (5); 60 Vict. (O.) c. 8, s. 28, part.

⁶ *Evans v. Mostyn*, (1877) 2 C. P. D. 547, was a decision upon section 13 of the "Metalliferous Mines Regulation Act, 1872," 35-36 Vict. c. 77. It enacts that where a mine to which the Act applies is abandoned, or the working thereof is discontinued, the owner thereof and every other person interested in the minerals of the mine shall cause the top of the shaft to be securely fenced for the prevention of accidents, provided that, subject to any contract to the contrary, the owner of the mine shall as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section. By the interpretation clause, section 41, "owner" means any person who is the proprietor, lessee or occupier of any mine, and does not include a person who merely receives a royalty, rent or fine from a mine, or is simply the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely owner of the soil, and not interested in the minerals of the mine. The respondents, who were owners in fee of mines and minerals, demised an old mine, part of the estate, for a term of years, subject to a rent or royalty, such royalties to be paid upon the place where the ore should have been gotten or weighed, and before it should be taken away. The lease also reserving to the respondents power of re-entry if the royalty should be in arrear. The lessees ceased working the mine, and left it, and allowed it to remain insufficiently fenced. It was held, that although the lease was still in force and undetermined, the respondents were guilty of an offence under section 13, as persons interested in the minerals of the mine.

⁷ See Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rules 18 and 19; 55 Vict. c. 9, s. 74 (6); 60 Vict. c. 8, s. 28, part. Apart from statutory enactment, it was held in *Williams v. Groucott*, 1863, 4 B. & S. 149, that a person entitled to the minerals under



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the land of another, with license to make a mine-shaft opening into it, is, in the absence of any stipulation to the contrary, under a legal obligation to the owner of the surface soil to fence the shaft so as to prevent its being a source of danger to his cattle which may be upon it, and is liable to an action for injury accruing to those cattle for want of such fencing.

⁸ 1890, c. 10, s. 23, Rule 7, the same as 1897, R. S. O. c. 36, s. 69, Rule 8; see Imp. Act, 50 & 51 Vict. c. 58, s. 49, Rule 19.

⁹ Ditto, Rule 20.

¹⁰ Ditto, Rule 25.

¹¹ Ditto, Rule 27.

¹² Ditto, Rule 28.

¹³ Ditto, Rule 29.

¹⁴ Ditto, Rule 30.

¹⁵ Ditto, Rule 31.

¹⁶ Ditto, Rule 32.

¹⁷ Ditto, Rule 35; see 55 Vict. (O.) c. 9, s. 74 (7-20).

70. In any of the following cases, namely:

1. Where any working is commenced for the purpose of opening a new shaft for any mine to which this part applies;
2. Where a shaft of any mine to which this part applies is abandoned, or the working thereof discontinued;
3. Where the working of a shaft of any mine to which this part applies is recommenced after an abandonment or discontinuance for a period exceeding two months; or
4. Where any change occurs in the name of a mine, or in the name of the owner or agent of a mine to which this part applies, or in the officers of any incorporated company which is the owner of a mine to which this part applies;

The owner or agent of such mine shall give notice thereof to the Inspector within two months after such commencement, abandonment, discontinuance, recommencement or change, and if such notice is not given the owner or agent shall be guilty of an offence against this Act.¹

¹ 55 Vict. c. 9, s. 62; 59 Vict. c. 13, s. 4.

NOTICE OF ACCIDENTS.

71.¹ Where in or about any mine to which this Act applies whether above or below ground, either

1. Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder or of any steam boiler; or

2. Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever,

the owner or agent of the mine shall within twenty-four hours next after the explosion or accident send notice in writing of the explosion or accident and of the loss of life, or personal injury occasioned thereby to the Director of the Bureau of Mines, and shall specify in such notice the character of the explosion or accident and the number of persons killed and injured respectively.

(2) Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the Inspector within twenty-four hours after such death comes to the knowledge of the owner or agent. Every owner or agent who fails to act in compliance with this section shall be guilty of an offence against this Act.²

¹ Imp. Act, 50-51 Vict. c. 58, s. 35.

² 55 Vict. c. 9, s. 61.

72. The Commissioner of Crown Lands may at any time direct an Inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient; and in conducting an enquiry into the cause of loss of life or of personal injury to any person in or about a mine, the Inspector shall have power to take evidence upon oath.¹

¹ 55 Vict. c. 9, s. 67, part; 57 Vict. c. 16, s. 8.

PART V.—OFFENCES AND PENALTIES.

73. Any person who removes, or disturbs with intent to remove, any stake, picket or other mark placed under the provisions of this Act, shall forfeit and pay a sum not exceeding \$20 and costs; and in default of payment of the fine and costs, may be imprisoned for any period not exceeding one month.¹

¹ 1868-9, c. 34, s. 32; 55 Vict. c. 9, s. 45.

74. Every person contravening Part III. of this Act or any rule or regulation made under it, in any case where no other penalty or punishment is imposed, shall, for every day on which such contravention occurs, or continues, or is repeated, incur a fine of not more

than \$20 and costs; and, in default of payment of the fine and costs, such person may be imprisoned for a period not exceeding one month.¹

¹ Derived from 27 and 28 Vict. c. 9, s. 36, with which it is identical; 55 Vict. c. 9, s. 48.

75. Every person who pulls down, injures or defaces any rules, notice or abstract posted up by the owner or agent shall be guilty of an offence against this Act.¹

¹ First appears in 33 Vict. c. 10, s. 25; 55 Vict. c. 9, s. 75.

76. Every person who wilfully obstructs an Inspector in the execution of his duty under this Act, and every owner or agent of a mine who refuses or neglects to furnish to the Inspector the means necessary for making any entry, inspection, examination or enquiry under this Act in relation to such mine, shall be guilty of an offence against this Act.¹

¹ First appears in 53 Vict. c. 10, s. 15 (4); 55 Vict. c. 9, s. 65 (2).

77. Where work of any sort in or about a mine is let to a contractor, he shall observe and carry out all the provisions of Part IV. for the prevention of accidents, and if he contravenes any of such provisions he shall be guilty of an offence against this Act and shall be liable to the same penalties and may be proceeded against in the same way and to the same extent and effect as if he were an owner or agent.¹

¹ Derived from 53 Vict. c. 10, s. 18, from which it is not materially different; re-enacted in 1892 by 55 Vict. c. 9, s. 69; amended in 1894 by 57 Vict. c. 16, s. 9, and in 1897 by 60 Vict. c. 8, s. 27; amending 1892, c. 9, s. 65; R. S. O., 1897, c. 36, s. 77, is nearly identical with the section as amended in 1894, c. 16, s. 9.

78. Every person who contravenes or does not comply with any of the general rules contained in section 69 shall be guilty of an offence against this Act, and in the event of any contravention or non-compliance with any of the said general rules in the case of any mine to which this Act applies by any person whomsoever being proved, the owner and agent of such mine, and any contractor and foreman employed in or about such mine, shall each be guilty of an offence against this Act unless such contractor or foreman proves that he had taken all reasonable means to prevent such contravention or non-compliance by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine.¹

¹ Derived from 55 Vict. c. 9, s. 74, Rule 21, which omits after the word "mine" in 6th line the words, "and any contractor and fore-

man employed in or about such mine" (which were added in 1894 by 57 Vict. c. 16, s. 10), and omits at beginning of 8th line the words, "such contractor or foreman," containing instead the word "he."

79. Every person other than the owner or agent employed in or about a mine, who is guilty of any act or omission which in the case of the owner or agent would be an offence against Part IV. shall be deemed to be guilty of an offence against the said part.¹

¹ Derived from 53 Vict. c. 10, s. 18, part, which reads, "this Act" for "Part IV." on 4th line, and "this Act" for "the said part" on line 5; 55 Vict. c. 9, s. 69, reads "this part" for "Part IV." on line four; and "this Act" for "the said part" on line five.

80. Every owner or agent guilty of an offence against Part IV. shall be liable to a penalty not exceeding, except as in this section hereinafter provided, fifty dollars, and any other person guilty of an offence against Part IV. aforesaid shall be liable to a penalty not exceeding, except as in this section hereinafter provided, ten dollars: Provided that if the Director of the Bureau of Mines or an Inspector has given written notice of any such offence having been committed, every such owner, agent or other person shall be liable to a further penalty not exceeding five dollars for every day that such offence continues after such notice.¹

¹ Practically identical with 53 Vict. c. 10, s. 18, part; varied slightly and consolidated in 1892 by 55 Vict. c. 9, s. 69; amended in 1896 by 59 Vict. c. 13, s. 5, by inserting after the word "if" on sixth line the words "The Director of the Bureau of Mines or."

81. No prosecution shall be instituted against the owner or agent of a mine to which this part applies for any offence under this Act except by an Inspector, or by the County or District Crown Attorney, or with the consent in writing of the Attorney-General; and in case the owner or agent of a mine is charged with an offence under this Act he shall not be found guilty thereof if he proves that he had taken all reasonable means to prevent the commission thereof, and an Inspector shall not institute any prosecution against an owner or agent if satisfied that he had taken such reasonable means as aforesaid.¹

¹ Derived from 53 Vict. c. 10, s. 20, which omits from third line "or by"; from fourth line "Crown," and from fifth, sixth and seventh lines, "case the owner or agent of a mine is charged with an offence under this Act he shall not be found guilty thereof," substituting therefor in the case of this last omission the words, "the case of any offence of which the owner or agent of a mine is not guilty"; omitting also "and" from eighth line, and "an" from ninth line; and in the case of this last omission substituting the word "such"; 55 Vict. c. 9, s. 71.

82. Every Inspector for a mining division may convict upon view of any of the offences punishable under the provisions of Part III. of this Act or any regulations made under it.¹

¹ Derived from 27 & 28 Vict. c. 9, s. 37, which provided that a Gold Mining Inspector might convict on view; amended in 1868-9 by 32 Vict. c. 34, s. 37, to read, "Any inspector for a mining division may convict upon view of any of the offences punishable under the provisions of this Act, or regulations made under it"; and in 1892 by 55 Vict. c. 9, s. 49, "every inspector" may "under the provisions of this part of this Act."

83. All prosecutions for the punishment of any offence under this Act except under section 18 may take place before any two or more of Her Majesty's Justices of the Peace having jurisdiction in the county or district in which the offence is committed, or before a Police or Stipendiary Magistrate, or before an Inspector of the mining division under the provisions of ¹ "The Ontario Summary Convictions Act."²

¹ R. S. O. (1897) c. 90.

² Derived from 53 Vict. c. 10, s. 22, which omits on second line, "except under section 17," and follows the same language down to word "magistrate," on line five; 55 Vict. c. 9, ss. 52, 73; 60 Vict. c. 8, s. 21.

84. Any complaint or information made or laid in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information respectively arose, and

1. The description of any offence under this Act in the words of this Act shall be sufficient in law.
2. Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on the part of the prosecutor or informant.¹

¹ Derived from 53 Vict. c. 10, s. 19, and s.-ss. 1 and 2, with which it is identical, omitting the words "prosecutor or" on last line of s.-s. 2; 55 Vict. c. 9, s. 70.

85. Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by

this Act, provided that he shall not be punished twice for the same offence.¹

¹ Derived from 53 Vict. c. 10, s. 21, s.-s. 1, which read on line four, after the word "Act," the words "so that no person," instead of the words "provided that he shall not"; 55 Vict. c. 9, s. 72 (1).

86. If the Court before whom a person is charged with an offence under this Act thinks that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the Court may adjourn the case to enable such proceedings to be taken.¹

¹ Derived from 1890, c. 10, s. 21 (2), with which it is identical; 55 Vict. c. 9, s. 72 (2).

87. Fees, penalties and fines received under this Act, and the costs of all such convictions as take place before any Inspector or magistrate appointed under this Act, shall form part of the Consolidated Revenue Fund of this Province, and be accounted for and dealt with accordingly; and the expenses of carrying this Act into effect in any mining division shall be paid by the Lieutenant-Governor out of the said Consolidated Revenue Fund.¹

¹ Derived from 27 and 28 Vict. c. 9, s. 39, which it closely resembles; 55 Vict. c. 9, s. 51.

CHAPTER XV.

QUEBEC.

Introductory.

The law of this Province with regard to mining and to minerals is almost entirely statutory.

Mining Acts now Consolidated. The previous statutes have been amended and consolidated by the Act of 1892,¹ cited as the "Quebec Mining Law."² This Act now comprises Articles 1421-1582 of the Revised Statutes of the Province of Quebec. With all orders in council or regulations made by the Lieutenant-Governor in Council, in virtue of the powers conferred by Art. 1580, the Act forms a mining code for the Province.

¹ 55-56 Vict. c. 20.

² Art. 1421.

1. The Acts in force prior to 1892, and the mining regulations thereunder, were repealed by the Act of 1892. From information supplied by the Department it appears that no general regulations under the Act of 1892 have been issued.

There is no special treatise on the mining law of Quebec except a *brochure* by Mr. Adolphus M. Hart, entitled "Practical Suggestions on Mining Rights and Privileges in Canada." (Montreal, 1867).

Statutes Based on Old French Law. The leading rules of the "Quebec Mining Law," and of the previous statutes which it consolidates, are mainly derived from the French law. It will be convenient to give a brief sketch of the earlier history of the law.

History of the Law—Roman Law. In the Roman law, under the Republic and the earlier Emperors, the proprietor of the surface was proprietor also of the mines. The minerals were looked upon as fruits.³

³ See Dig. 7, 1, 9, 3; 7, 1, 13, 5; 24, 3, 7, 14; 27, 9, 3, 6.

Many mines belonged to the state, and were worked by criminals, the *damnati in metalla*, or *servi poenae*. But these were in public

lands. In the later Roman law, the famous *maxim cujus est solum ejus est usque ad coelum et deinde usque ad inferos* was no longer strictly true of minerals below the surface. It is unnecessary to discuss the precise view which was taken of the right of property in the minerals. But it is clear that the state had assumed the general administration of all mines within the empire. The charge over them was entrusted to an official known as the *comes metallorum*, who acted through officers or collectors called *procuratores metallorum*.

From the constitution of the Emperors Gratian, Valentinian, and Theodosius of A.D. 382,⁴ it appears that the system of "free mining" then prevailed. Any person might open and work a mine either in his own land or in the land of another. If the surface was his own he was bound to give to the fisc, or state treasury, one-tenth of the proceeds of the mine. If the surface belonged to another, the miner was bound to give one-tenth to the fisc, and one-tenth to the owner of the surface, retaining the remaining four-fifths of the proceeds for himself. The state, however, would not authorize the working of a mine in land not belonging to the miner if danger was caused thereby to the foundations of buildings.⁵

⁴ Code, 11, 6, 3.

⁵ C. 11, 6, De Metallariis; see per Caron, J., in Reg. v. De Léry, 9 Q. L. R., at p. 231; Serrigny, Droit Public Romain, V. 2, s. 875; Merlin, Questions de Droit, Mines, s. 1; Bainbridge, Mines and Minerals, 4th ed., 112.

Old French Law. These rules of the later Roman law were in operation in Gaul at the time of the disruption of the Roman Empire, and there seems little reason to doubt that they were retained by the Gauls. From the earliest records which have been preserved, it is clear that mines were subject to special legislation in the interest of the state, and that the King asserted and vindicated a claim to one-tenth of the proceeds of all mines. The Ordinances, etc., of the French Kings on the subject have been collected and annotated by M. Lamé Fleury in his work "De la Législation Minérale sous l'ancienne Monarchie."⁶ The history is well given by M. A. Chevallier, "La Propriété des Mines," and by M. F. Naudier, "Traité des Mines."⁷ The latter work contains⁸ a bibliography of the French treatises on mining law.

⁶ Paris, 1857.

⁷ Paris, 1877.

⁸ At p. 665.

So far as the old French law is of importance as bearing on the law of Quebec, it was carefully reviewed by Caron, J., in Reg. v. De

Léry,⁹ and by Ramsay, J., in giving the judgment of the Court of Queen's Bench, dismissing the appeal from Caron, J.¹⁰

⁹ 9 Q. L. R. 225.

¹⁰ (1883) 6 L. N. 402.

M. Lamé Fleury divides the French law before the Revolution into three periods:—

1. Period of Free Mining. 1413-1548. This is the period of "free mining" as taken from the Roman system. The Ordinance of Charles VI. of 30th May, 1413, registered in the *Chambre des Comptes de Paris*, and therefore forming part of the laws of the Province of Quebec, shows that the King claimed one-tenth of the proceeds of all mines. Anyone is permitted to open a mine on his own land, or on the land of another, subject to payment to the King of one-tenth, and to payment of indemnity to the owner of the surface if it does not belong to the miner. It appears that the *seigneurs* had maintained that they were also entitled to one-tenth. This claim was expressly overruled by the Ordinance of 1413. "*Nul seigneur n'a, n'aura, ne doit avoir, . . . la dixieme partie, ni autre droit de mine.*"¹

¹ See in Lamé Fleury, p. 5.

2. Period of Concession of all Mines to One Person. 1548-1597. This is the period of concessions to one individual of all the mines in the Kingdom. The concession is based upon public policy, and to stimulate mining. The *cessionnaire* may open a mine in any man's land, subject to payment of an indemnity. The King is to receive his tenth, and, rather inconsistently with the legislation of the first period, the *seigneur* is to get a fortieth.²

² See the *ordonnance* of Henri II. in favour of de Roberval, 30th September, 1548, and the letters patent of 1552, in Lamé Fleury, p. 41.

3. Period of Vacillation. Pre-emption given to owner of soil. 1597-1791. This is a period of legislation of a somewhat varying kind. On the whole, in the words of Ramsay, J., "it is in some sort a return to the earlier plan of throwing the right to mine open to all persons, but to subject its exercise to the most rigorous control so as to ensure the Crown's revenue. This policy remained unchanged till Canada passed away from the King of France."³ It is in this period also that the state begins to recognize a right in the owner of the surface to acquire, if he chooses, the mining rights in preference to any third person.⁴ In 1722 Louis XV. promulgated an edict establishing a company to work all the mines in the Kingdom. The

³ R. v. De Léry, 6 L. N. at p. 407.

⁴ See the Edict of Henri IV., June, 1601, Lamé Fleury, p. 74.

proprietor's right of pre-emption again disappears. This edict seems not to have been registered in Paris.⁵ It was the law in France until 1789. After 1763, the date of the cession of the Province, the French legislation does not affect us. But it may be said in a word that it is to be found in the law of 21st of April, 1810, and the law of the 27th July, 1880. The King's right to control mines and to levy a tithe of the proceeds was thus admitted in France from an early time. But the exact nature of the right of the Crown in the minerals was, in the French law, not free from difficulty.

⁵ Lamé Fleury, p. 95.

⁶ It was much discussed in the Assemblée Nationale in 1791. Every conceivable view as to the ownership of minerals was there urged. 1. That they are *res nullius* and belong to the first occupant. 2. That they are *partes soli* and belong to the owner of the soil. 3. That they are part of the royal prerogative, and belong to the state. The law of 28th July, 1791, cut the Gordian knot by saying that the state had the control of mines, "*Les mines sont a la disposition de la nation.*"⁷

⁷ See the argument in Merlin, Questions de Droit, Mines, s. 1.

⁸ See an account of these debates in Chevallier La Propriété des Mines, pp. 9, 26, and Naudier, Traité des Mines, p. 37.

Perhaps the sound view is that as to the property, a distinction was drawn between gold and silver on the one hand, and the baser metals on the other. It is said:⁹ "Mines of gold and silver belong to the King, other mines belong to the proprietor of the surface, but the King is entitled to his tenth of the yield."⁹

⁹ In Lauriére's edition of Loysel.

¹⁰ Liv. II., Tit. 2, reg. 13; see Dalloz, Mines, No. 9; Cf. in the English law, Att.-Gen. of Brit. Columb. v. Att. Gen. of Canada, (1889) 14 Appeal Cases, 295; and see in Scotland, Earl of Breadalbane v. Jamieson, (1875) Court of Sess. Cases, 4th series, 2, 826.

In Canada, the commission of 1654 by the King in favour of Nicholas Denys to be Governor and Lieutenant-General in Canada directed him to search diligently for mines and to put them to use. The Crown of France reserved the tenth part of the profit of all gold and silver mines, and as to other mines the Governor was directed to take "what might belong to the Crown of the right thereto,"¹⁰ to defray the expenses of government.¹

¹⁰ Ce qui pourrait nous en appartenir."

¹ Edits et Ordonnances, Vol. III., p. 18.

The extent of the mineral wealth of Canada was not at all realized in the 17th century. This is shewn very clearly by the fact

that, by an arrêt of 8th June, 1677, the King made a present for twenty years to Jean Baptiste de Lagny des Brigandières of all the mines in Canada.² But the question as to the nature of the King's right according to the old law of France is really academic. It is beyond dispute that the Kings of France had the right to make laws regulating all mines, and to exact one-tenth of the yield. It is further clear that the King had the power to dispose as he pleased of all mines ungranted. And, as regards this Province, it is settled³

1. That without special words the right to gold and silver mines did not pass to a grantee of lands from the Crown, but remained in the sovereign.
2. That the King of England at the cession in 1763 succeeded to the rights of the French Crown over minerals. And by Art. 1423 of the Mining Law, 1892, the Crown's right in all minerals which have not been expressly conceded is declared to be a right of property.

² Ibid., Vol. II., p. 83.

³ Reg. v. De Léry, (1883) 6 L. N. 402.

It was pointed out in *R. v. DeLéry*⁴ that, although the King of England had succeeded to all the rights in minerals in Canada which had been vested in the Crown of France, the difference in the constitutional powers of the sovereign in the two countries would affect their future exercise. The King of France, as, practically speaking, an absolute monarch, had the power to revoke a grant of minerals actually made. After the cession no such power could be exercised by the Crown of England, because to do so would be to infringe upon the sole right of Parliament to legislate.

⁴ *Supra*.

Analysis of Act of 1892. The main provisions of the law as now consolidated are:—

1. That all mining rights in land in the Province of Quebec belong to the Crown unless the Crown has been validly divested of them. "Mining rights" is a wide term, and includes all quarries of stone, and all rocks or soil in which are found "any mineral substance having an appreciable value."⁵

⁵ Art. 1421, s. 2.

2. The Crown is not so divested by a grant of lands for agricultural purpose, which is silent as to the mining rights.

3. If the mining rights and the property come into the hands of the same person, the two properties become one by confusion.⁶

⁶ Art. 1423.

4. The confusion is resolved and the two properties become distinct by a sale, lease or hypothecation of either separately.

5. But this cannot prejudice the rights acquired by any creditor in the whole property during the confusion.⁷

⁷ Art. 1424.

6. A person who acquired land by letters patent previous to 24th July, 1880, with reservation of the mining rights, cannot work any mine without purchasing the mining rights.⁸

⁸ Art. 1425.

7. If he acquired in this way previous to 24th July, 1880, without any reservation, he may work mines other than gold or silver mines without such purchase.⁹

⁹ Art. 1426.

8. If he acquired in this way since 24th July, 1880, although there was no express reservation, he cannot work any mine without such purchase.¹⁰

¹⁰ Art. 1427.

9. In seigniories in which the Crown holds the mining rights a *cessitaire* has a reduction of 50 cent an acre if he purchases the mining rights in at least one hundred acres.¹

¹ Art. 1428.

A seignior can purchase mining rights over the whole seignior, but not over a less extent. But neither he nor the *cessitaire* can acquire more than the maximum amount which may be granted to any person, viz., 400 acres, or 1,000 acres by special authority of the Lieutenant-Governor.²

² Art. 1428.

10. As to phosphate of lime, it cannot be worked without purchase by any grantee who acquired from the Crown on the usual terms after 9th March, 1878.³

³ Art. 1429.

11. The foregoing rules apply to grantees under gratuitous title and to settlers under location ticket after 24th July, 1880.⁴

⁴ Arts. 1430, 1432.

12. One who has purchased the right to mine for inferior metals, cannot mine for the superior metals without paying the additional price.⁵

⁵ Art. 1431.

13. The price may be increased by a regulation of the Governor-General, and a royalty may be claimed upon lands which have not been alienated by the Crown more than five years.⁶

⁶ Arts. 1434, 1435.

14. The proprietor of the soil has a preferential right to purchase the mining rights.⁷

⁷ Art. 1441.

15. If he chooses to mine his lands, subject to the conditions before given, and to take out a license, no one else can purchase the mining rights from the Crown.⁸

⁸ Art. 1469.

16. On his refusal, another person may purchase the mining rights or obtain a mining license, and work the mines. In that case, the owner of the soil will receive compensation as fixed by arbitration.⁹

⁹ Arts. 1466-1490.

17. Without purchase of the mining rights, a person may obtain a mining license.¹⁰

¹⁰ Art. 1452.

18. Arts. 1436-1439 deal with the form of mining concessions.

19. Arts. 1440-1451 with their price, mode of purchase, right to alienate, reserve of timber and right of the commissioner to cancel a sale by the Crown if the conditions as to effective working are not complied with.

20. Arts. 1452-1457 deal with exploration and prospecting licenses.

21. Arts. 1461-1465 with the form and duration of licenses and the powers of licensees.

22. The rest of the Act is machinery for carrying it out, powers of inspection, provisions for protection of workmen, penalties for offences against the Act, necessity of license for quartz crushers other than those worked by hand, provision as to party walls, water-courses, powers of Lieutenant-Governor to make regulations, and miscellaneous provisions as to details.

"QUEBEC MINING LAW."

Revised Statutes of Quebec, Chapter XX.

An Act to amend and consolidate the Mining Law.

Assented to 24th June, 1892.

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Section ninth of chapter sixth of title fourth of the Revised Statutes of the Province of Quebec, as replaced by the Act 54 Victoria, chapter 15, is again replaced so as to read as follows:

SECTION IX.

MINES.

§ 1.—*Declaratory and Interpretative.*

"1421. In the construction and application of this section, which may be cited as the "Quebec Mining Law,"¹ and of all orders in council or regulations under it, if not inconsistent with the context or subject matter, the following terms have the respective meanings hereby assigned to them, that is to say:

¹ This Act is similar in its leading provisions to the French Mining Act of 1810.

1. The words "to mine" and "mining" mean and designate any mode or method of working whatsoever, whereby the soil or earth, or any rock or stone may be disturbed, removed, carted, carried, washed, sifted, smelted, refined, crushed, or otherwise dealt with, for the purpose of obtaining any minerals;

2. The words "mines" and "minerals" mean and include all quarries of stone of whatever kind, and all stones or rocks, earth or soil, whether alluvial or not, in which are found gold, silver, copper, phosphate of lime, asbestos, or any mineral substance having an appreciable value;

This no doubt includes coal. But, it is believed, no coal is being worked in the Province. It does not include bits of gold found in rivers or strewed about on land. This is not "treasure" in the sense of Art. 586 of the Civil Code, because it is not a thing which has been buried or hidden by a former owner. It never had an owner. By old French law it was called "or en paillole," and was said to come like manna and by

the grace of God, "par forme de manne et grâce de Dieu." It was always treated as the property of the finder. *Lamé Fleury*, p. 116; *R. v. DeLéry*, (1883) 6 L. N. at p. 404.

3. The words "mining division" mean and designate any tract of country erected into a "mining division" under this law;

4. The words "public lands" or "Crown Lands" mean and designate all Crown Lands or Ordinance Lands transferred to the Province, Clergy lands or lands of the Jesuits' Estates, Crown Domain or Seigniori of Lauzon, which have not been alienated by the Crown;

5. The words "private lands" designate all lands conceded or otherwise alienated by the Crown, other than mining concessions or lands conceded by the Crown as such, or which shall be hereafter conceded;

6. The words "private person" mean any person who possesses a lot of land, as proprietor or usufructuary, upon which mines or minerals exist or are supposed to exist;

7. The word "licensee" designates any person, firm or company, who may have obtained a license under the present law;

8. The words "party wall or *passage*" designate a bank of earth or rock left between two excavations;

9. The words "mill or machine license" mean a permit to use machinery for the purpose of extracting or preparing minerals;

10. The words "licensed mills or machines" designate the mills or machines so licensed for extracting gold or silver from stone or quartz; and the words "licensed mill or machine owner" designate the person to whom any such license has been granted;

11. The words "superior metals" include the ores of gold, silver, lead, copper, nickel, and also graphite, asbestos, mica, and phosphate of lime; and the words "inferior metals" mean and include all the minerals and ores which are not included in the preceding definition and which are of appreciable value;

12. The words "mining concession" mean any tract of country sold for the purpose of mining;

13. The words "underground mining concession" mean any underground mining property sold for the purpose of mining under the present law;

14. The word "Commissioner," when used alone, means the Commissioner of Crown Lands;

15. All measurements and distances under this section are made and taken to be according to English measurement. 43-44 Vict. c. 12, ss. 1 and 164; 51-52 Vict. c. 15, s. 9, and R. S. Q. 1421.

§ 2.—*Privileges and Aliens and Reserve of Mining Rights.*

"1422. Aliens, as well as British subjects, may enjoy the benefit of this law, by complying with its provisions and submitting thereto. 43-44 Vict. c. 12, s. 2, and R. S. Q. 1422.

"1423. It shall not be necessary, in any letters-patent for lands granted for agricultural purpose, to mention the reserve of mining rights, which reserve is always considered as existing under the provisions of this law.

As respects the Crown, such mining rights, so tacitly reserved, shall be property separate from the soil covering such mines and minerals comprised in such rights, and shall constitute a property under the soil which shall also be public property independent from that of the soil which is above it, unless the proprietor of the surface or superficial property have purchased it from the Crown as a mining concession or otherwise, in which case the properties, superficial and underground, constitute only one private property. 43-44 Vict. c. 12, s. 3; 47 Vict. c. 22, s. 1, and R. S. Q. 1423 and 1424.

Article 414 of the Civil Code of Lower Canada provides, "ownership of the soil carries with it ownership of what is above and what is below it." But the right of the proprietor to make excavations below the soil, and to draw from them any products they may yield is declared to be "saving the modifications resulting from the laws and regulations relating to mines, and the laws and regulations of police."

See *Stevenson v. Wallingford*, (1894) R. J. Q. 6 C. S. 183.

The principle underlying the provision of the legislation, that the Crown in making a grant of lands for agricultural purposes is not to be understood to be conveying the minerals, is that given by Domat (t. 1, ch. xxii., livre II., s. 2, No. 19), for the same rule of the old French law. It is for the public interest that the sovereign should have in mines and minerals a right independent of that of the owners of the surface. Further, as to past grants, one may reasonably say that the right of the grantees was in its origin limited to making use of their lands for sowing, planting, or building upon them, or for other similar purposes, and that their titles did not imply a right to mines which were unknown, and of which the use is destined by nature to the public, from the use which the state may have for metals and other special substances extracted from mines. "La nécessité des métaux, non

seulement pour les monnaies, pour l'usage des armes, et celui de l'artillerie, mais pour une infinité d'autres besoins et commodités, dont plusieurs regardent l'intérêt public, rend ces matières et celle des autres métaux si utiles et si nécessaires dans un état, qu'il est de l'ordre de la police que le souverain ait sur les mines de ces matières un droit indépendant de celui des propriétaires des lieux où elles se trouvent, et d'ailleurs on peut dire que leur droit dans son origine a été borné à l'usage de leurs héritages pour y semer, planter, ou bâtir, ou pour d'autres semblables usages, et que leurs titres n'ont pas supposé un droit sur les mines qui étaient inconnues, et dont la nature destine l'usage au public, par le besoin que peut avoir un état des métaux et autres matières, singulières qu'on tire des mines. Ainsi les lois ont réglé l'usage des mines, et laissant aux propriétaires du fonds ce qui a paru juste, elles en ont aussi réglé un droit pour le souverain. (Cited by Caron, J., in *Reg. v. De Léry*, 9 Q. L. R. at p. 233, where see other authorities to the same effect. See for a similar doctrine in English law *Att.-Gen. of Brit. Columbia v. Att.-Gen. of Canada*, (1889) 14 Appeal Cases, 295, and in *Scotland Breadalbane v. Jamieson*, (1875) Court of Sess. Cases, 4th series, Vol. II., p. 826. The mining rights so tacitly reserved remain vested in the Crown as a separate property. They may, however, be acquired by the owner of the surface from the Commissioner of Crown Lands as a mining concession. In this case the two properties, superficial and underground, will become one by confusion, or they may be occupied and worked under a mining license. (Art. 1440, 1469). And the proprietor of the surface has a preferential right or right of pre-emption in the mining rights under his lands. (Arts. 1440, 1441). If he desires to purchase them as a mining concession, or to work them under a mining license, he can exclude any other person. (Arts. 1441, 1469).

This places a proprietor of the soil under whose lands there are minerals still vested in the Crown in a more favoured position than one under whose lands the minerals are vested in a private owner. For in the latter case the proprietor of the surface has no preferential right to purchase the minerals. It has accordingly been held that a vendor of lands must not conceal from the purchaser the fact that the mining rights under the lands do not belong to the Crown. An unreserved sale of an immovable conveys all mining rights in the same, subject to the provisions of the Quebec Mining Law, and an action will lie to resiliate such sale, or for an indemnity, by a purchaser who subsequently discovers that a reserve of such mining rights exists in favour of his vendor's authors. *Neil v. Proulx*, R. J. Q. 1 C. S. 565; see *Turrieff v. Cie de Ch. de Fer Quebec Central*, R. J. Q. 2 Q. B. 559.

§ 3.—*Exceptional Provisions.*

"1424. Whenever a person who has become owner of the soil and of the property under the soil, under any title, before the tenth of June, 1884, sells, hypothecates, leases or affects the mining rights in such property to another person under article 2099 of the Civil Code of Lower Canada, such soil and the property under the soil

again become two properties perfectly distinct and independent from each other, for all lawful purposes, as they were when in the possession of the Crown, so that the sale, judicial or otherwise, of one of these properties, does not in any way affect the other.

This removes doubts which seem to have been felt as to the position of an owner of both the soil and the property under the soil, who acquired them before 10th June, 1884, the date of the commencement of the Act 47 Vict. c. 22. The Act of 1861, 24 Vict. c. 31, virtually recognized the possibility of dual ownership, where the soil and the property belong to two different persons, and can be dealt with separately, just as if the one property adjoined the other laterally, instead of being super-imposed upon it. Article 2099 of the Civil Code is based upon the Act of 1861. Article 2098 of the Civil Code enacts that all acts *inter vivos*, conveying the ownership of an immovable, must be registered at length or by memorial. In default of such registration the title cannot be invoked against a subsequent purchaser for value from the same vendor whose title is registered. But Art. 2099 makes this modification: "Notwithstanding the provisions herein above contained, the sale, lease, or transfer of a mining right, if the title be authentic [*i.e.* executed by a notary], is preserved, and takes effect from its date by means of its registration within sixty days after its date, even though such act be not followed by actual possession. So, in a case where mining rights had been sold in 1863, it was held that, when the mining rights have been reserved, or separately sold, they form a distinct property, and are unaffected by subsequent mutations, registrations, or prescriptions of the superficial property. (*Laurier et al. v. Desbarats et al.*, R. J. Q. 9 C. S. 274. See *Stevenson v. Wallingford*, R. J. Q. 6 C. S. 183.) The section declares the law as to owners whose titles are prior to 10th June, 1884. But, although very oddly expressed, it seems that it does not imply that an owner whose title to both the soil and the minerals, or to either of them, is since 10th June, 1884, in a different position. In his case also there is confusion of the two estates while he holds both. This is expressly laid down in Art. 1423; and by dealing separately with the mining rights he makes them form a separate estate again. If this is sound, Art. 1424 must be understood as if it read: "Whenever a person who has become owner of the soil, and of the property under the soil, under any title, *even before the 10th June, 1884.*" In the Act 47 Vict. c. 22, s. 1, the words were "before the passing of this Act." In *Stevenson v. Wallingford*, R. J. Q. 6 C. S. 183, the owner of both the surface and the minerals had sold the mining rights separately. Subsequently the surface was sold by the sheriff for municipal taxes. The purchaser claimed that he had got the minerals also, but the Court rejected this contention. Mining rights are exempt from municipal taxation (Art. 1579). The owner of the surface only can never acquire the ownership of the mines by prescription, for the plain reason that he never possesses them. But rights of servitude which have been included in the reserve of mining rights, *e.g.*, rights of way, of drawing water, of erecting buildings for mining operations, and the like, may be lost or extinguished by non-user for thirty years. (*Laurier et al. v. Desbarats et al.*, R. J. Q. 6 C. S. 274; C. C. Art. 462.)

2. It is, however, well understood that the rights acquired over such property, during the confusion in the ownership of the soil and of the property under the soil, are in no wise affected by the subsequent sale of mining rights and the division of the property in the soil and of that under the soil arising therefrom; only that the owner of the property under the soil shall be sued and made a party to the suit in the same manner as if he had purchased a part or portion of the soil. 47 Vict. c. 22, s. 1, and R. S. Q. 1124.

This section is clear. A creditor who has a mortgage over the whole property, surface and minerals, as it is held by a single owner, cannot be prejudiced by a subsequent separation of the two estates. His mortgage will affect the mining rights which have been sold, as well as the surface which is retained. The purchaser of the mining rights in fact, as it is said, is in the same position as if he had bought a part of the surface instead of the underground property.

An owner who sells, transfers, or alienates mining rights, is now bound to give notice of the transfer, etc., to the Commissioner within thirty days. (Art. 1442, 1527).

For a list of cases in which leases or alienations of mining rights have been judicially construed, see note on 1442

"1425. Any person who, previous to the 24th July, 1880, obtained by letters-patent, for agricultural purposes, but with reservation by the Government of the mining rights, any lot whatever, forming part of the public lands of this Province, may, if he or his legal representative discovers and wishes to work a mine, purchase the mining rights so reserved by the Government, by paying in cash to the Commissioner, over and above the price already paid for said lot, a sufficient additional amount to make up the sum required by article 1444. 43-44 Vict. c. 12, s. 4, and R. S. Q. 1425.

"1426. Every proprietor of land sold for agricultural purposes, by letters-patent, previous to the 24th July, 1880, but without any reservation by the Government of the mining rights, or the legal representative of such proprietor who discovers upon such land a gold or silver mine, may work the same, by paying to the Commissioner, over and above the price already paid for such land, a sufficient additional amount to make up the sum required by article 1444. 43-44 Vict. c. 12, s. 5, and R. S. Q. 1426.

"1427. Every proprietor of land sold by letters-patent for agricultural purposes since the 24th July, 1880, or which may be sold in the future, but without any reservation by the Government of the mining rights, or the legal representative of such proprietor who discovers a mine on such land, may work the same by paying to the Commissioner, over and above the price already paid for such land,

a sufficient additional amount to make up the sum required by article 1444.

This and the two preceding articles need to be carefully compared. In the case of lands sold by letters patent for agricultural purposes since the 24th July, 1880, the minerals tacitly reserved to the Crown will include all those enumerated in Art. 1421, s. 2, viz.: "All quarries of stone of whatever kind, and all stones or rocks, earth or soil, whether alluvial or not, in which are found gold, silver, copper, phosphate of lime, asbestos, or any mineral substance having an appreciable value. In the case of lands granted in the same way previous to 24th July, 1880, if there is an express reservation, its extent will depend upon its terms. But, if the reservation is of "mining rights" generally, this will include all the minerals above enumerated. Where there is no express reservation the Crown will, it is thought, be held only to have reserved the rights to gold and silver mines, and to mines of phosphate of lime, if the grant was after the 9th March, 1878. One would have expected a distinction so important to be stated expressly. But it is clearly implied from contrasting the words of Art. 1426 with those of Arts. 1425 and 1427. Where there is no express reservation, and the grant was prior to 24th July, 1880, it is said that the proprietor who discovers "a gold or silver mine" may work it on making the payment required by Art. 1444. If the grant was made after 24th July, 1880, or is made in future, and there is no express reservation, the proprietor cannot work "a mine" except on the same terms. And "mine" is defined in Art. 1421, s. 2, as cited above.

Moreover, Art. 1423 declares expressly that in future grants of land for agricultural purposes all the mining rights, and not merely gold and silver mines, are tacitly reserved. In expressing Art. 1426 the legislature seems clearly to have intended to make this distinction, and to provide that as to grants prior to 24th July, 1880, all minerals except gold and silver passed to the grantee, unless there was a special reservation of mining rights. This view is supported by the history of the legislation in Canada. Until the Act of 1880 it does not seem that the Crown made any claim as to minerals other than gold and silver, except as to phosphate of lime, since 9th March, 1878. It seems more questionable if the old law of France was to the same effect. The Court of Queen's Bench in *Reg. v. DeLéry* (6 L. N. 402), did not distinguish gold and silver from the other minerals in this respect. But the question in that case was as to a gold mine, and the judgment of Caron, J. (9 Q. L. R. 225), is more guarded. (See *Dalloz*, Mines, No. 9, and the introduction *supra*, as to the history of the French law). The view that in Crown grants prior to 24th July, 1880, without any reservation of minerals, all minerals except gold and silver passed to the grantee, seems, however, so clearly implied by Art. 1426 that, probably, the Courts would not think it necessary to inquire into the old French law on the point. In considering the rights of an owner of the surface in the minerals below it, the date of the original grant is an important element. The seigniories being all granted long before 24th July, 1880, it follows that in them the minerals, other than gold and silver, were granted with the lands, unless there was a general reservation of mining rights, and are no longer vested in the Crown.

"1428. In seigniories in which the Crown still holds mining rights, any *censitaire* or his legal representative who discovers a mine upon his land, may work the same, by paying to the Commissioner the sum required by article 1444, less fifty cents per acre, for the whole of his land, or for at least one hundred acres, at one and the same time;

2. The seignior or proprietor of the unconceded portion of a seignior, if he or his legal representative discovers a mine, and wishes to work the same, may do so, by paying to the Commissioner the sum required by article 1444, for the whole extent of such unconceded part of the said seignior, as limited by the following paragraph:

In all cases, no such proprietor, in virtue of letters-patent, *censitaire* or seignior, can thus obtain mining rights on a larger extent than that fixed by article 1443. 43-44 Vict. c. 12, s. 6, and R. S. Q. 1427.

A *censitaire* in a seignior in which the Crown has the mining rights may purchase them for fifty cents an acre less than any other person, if he takes at least a hundred acres.

The seignior or proprietor of the part of the seignior which has not been conceded to *censitaires*, cannot work the mines in such a case unless he purchases the mining rights for the whole seignior. But neither the *censitaires*, nor the seignior, can obtain more than the maximum amount to be granted to one person, viz., four hundred acres, or one thousand acres if an Order in Council to that effect be obtained. (Art. 1443). No doubt the seignior may also obtain a mining license like any other proprietor of the soil. (Art. 1441).

"1429. If, on any lot of land granted by letters-patent, since the 9th of March, one thousand eight hundred and seventy-eight, or which shall hereafter be granted, on the usual terms and conditions, for agricultural purposes, a mine of phosphate of lime has been found to exist, any purchaser of such lot or his legal representative, shall, if he wishes to work such mine, pay in cash, to the Commissioner, a sufficient additional amount to make up the sum required by article 1444. 43-44 Vict. c. 12, s. 7, and R. S. Q. 1428.

"1430. The grantees of lands under gratuitous title, or their legal representatives, are subject to the provisions of articles 1425, 1426, 1427, 1428 and 1429. 43-44 Vict. c. 12, s. 9, and R. S. Q. 1430.

"1431. Every person, who has obtained or who may hereafter obtain, by letters-patent, for the purpose of mining for inferior metals, one or more lots forming part of the public lands of this Province, shall, if he or his legal representative, discovers and wishes

to work, or cause to be worked, any mine of superior metals, pay to the Commissioner, over and above the price already paid for such mining land, a sufficient additional amount to make up the sum required by article 1444 for the purchase of mining lands containing superior metals; provided, always, that the sum already paid does not reach the latter amount. 43-44 Vict. c. 12, s. 10, and R. S. Q. 1431.

"1432. Every person who has obtained, since the 24th of July, 1880, or who may obtain in the future, by location ticket only, a lot of land from the Crown, on the usual terms and conditions, for agricultural purposes, and has not fulfilled or does not fulfil the required conditions, may, if he or his legal representative discovers upon such land a mine of any kind and wishes to work the same, work such mine, on paying to the Commissioner an additional amount as mentioned in articles 1425, 1426, 1427, 1428 and 1429; otherwise the title to the property so made may be cancelled by the Commissioner. 43-44 Vict. c. 12, s. 12, and R. S. Q. 1433.

The settler under a location ticket is to have the same right of pre-emption as a proprietor of land sold by letters patent. But if he neither pays the additional sum required by Art. 1444, and works the mine, nor fulfils the conditions upon which the location ticket was granted, his title to the property may be cancelled by the Commissioner.

"1433. Whenever an additional sum is paid under the preceding articles, a receipt establishing such payment shall be endorsed upon such document or letters-patent, by which the land has been so granted, and signed by the Commissioner or his assistant, or other persons duly authorized for that purpose, and afterwards registered in the office of the Provincial Registrar, with a reference to the document to which such receipt relates. 43-44 Vict. c. 12, s. 11, and R. S. Q. 1432.

"1434. The Lieutenant-Governor in Council has, in virtue of the provisions of article 1580, power to increase the price per acre of the lands mentioned in articles 1425, 1426, 1427, 1428, 1429 and 1432; and all persons desirous of availing themselves of the provisions of the said last mentioned articles must pay the increased prices fixed by Order in Council, under the provisions of the said article 1580. 49-50 Vict. c. 30, s. 1, and R. S. Q. 1434.

§ 4.—*Royalty.*

"1435. The Lieutenant-Governor in Council may, if he thinks proper, and in accordance with the conditions and formalities which he may deem advisable, claim, at any time, the royalty due to the

Crown upon any land already sold, conceded or otherwise alienated by the Crown or which may be hereafter sold, but only five years after the date of such alienation.

Such royalty, unless otherwise determined by letters-patent or other title from the Crown, is fixed by the Lieutenant-Governor in Council, in accordance with the report of the mining inspector, and taking as a basis the value, at the mine, of the mineral extracted, after deducting the costs of the extracting, and it must not exceed three per cent. of such value. 43-44 Viet. c. 12, s. 13, and R. S. Q. 1435.

§ 5.—*Mining Concessions, their form and dimensions.*

“1436. Mining concessions are divided into three classes, and each of them respectively, in addition to the usual allowance of five per cent. for highways, in each case, shall be of the following form and dimensions, viz.:

1. In unsurveyed territory:

The first class contains 400 acres:—52 chains in width by 80 chains and 80 links in depth;

The second class contains 200 acres:—26 chains in width, by 80 chains and 80 links in depth;

The third class contains 100 acres:—13 chains in width, by 80 chains and 80 links in depth.

2. In surveyed townships:

The three aforesaid classes respectively comprise: One, two and four lots, as regularly divided, or more or less, as the case may be, if such lots, being of irregular form, contain more or less than one hundred acres each, in superficies. 43-44 Viet. c. 12, s. 25, and R. S. Q. 1453.

“1437. In townships which are merely projected, the side lines of such concessions must be parallel to the side lines of the said townships, and the front and rear lines must coincide with the range lines as projected.

2. In unsurveyed territory, the direction of the exterior lines of all mining concessions shall be determined by the Commissioner. 43-44 Viet. c. 12, ss. 26 and 27, and R. S. Q. 1454 and 1455.

“1438. When mining concessions, in unsurveyed territory, border upon lakes or rivers, they shall front on such lakes or rivers and

be subject, in all cases, to the public rights in navigable and floatable waters.

Further, along such lakes or rivers, there is reserved a right of way, one half chain in breadth, which shall be comprised in the allowance of five per cent. specified in article 1436. 43-44 Vict. c. 12, s. 30, and R. S. Q. 1458.

"1439. All mining concessions, comprised in an unsurveyed territory, shall be surveyed by a provincial land surveyor, acting under the instructions of the Department of Crown Lands, and be connected with some known point in previous surveys, so as to be laid down upon the office maps of such territory of record in the Department.

Such surveys are made at the cost of the applicants, who are required to furnish, with their application to purchase, the plan of the survey or establishing the position and dimensions of the concessions they desire to purchase, with the field-notes and *proces-verbaux* of the operations; the whole in conformity with the present law and to the satisfaction of the Commissioner. 43-44 Vict. c. 12, s. 28, and R. S. Q. 1456.

§ 6.—*Acquisition of Mining Lands.—Duties of proprietors who sell their rights.*

"1440. All lands, supposed to contain mines or ores, belonging to the Crown, may be acquired from the Commissioner of Lands:

1. As a mining concession by purchase, or
2. Be occupied and worked under a mining license. 43-44 Vict. c. 12, s. 21, and R. S. Q. 1439.

"1441. The mining rights belonging to the Crown, in the property under the soil, under article 1423, may be acquired from the Commissioner in the manner indicated in the preceding article, by the proprietor of the soil, who has a preferential right thereto.

See note on 1423.

2. Articles 1466 and following, relating to mining on private lands, apply equally to property under the soil, referred to in this article, when the owner of the soil refuses to mine. 47 Vict. c. 22, s. 3, and R. S. Q. 1440, 1443, 1444, and 1445.

"1442. Every owner of mining land is bound, whenever he sells, transfers or alienates his rights in such land to give notice thereof to the Commissioner, within thirty days of such sale, transfer or alienation, under the penalties mentioned in article 1527.

Sales, leases, or other contracts dealing with mining rights are not subject to any specialties. In the cases under noted agreements relating to mines have been judicially construed. *Baker v. McLelland*, 24 S. C. 416; *Johnson et al. v. Ayimer*, 1 L. C. L. J. 67, and 18 Mathieu, 145; *Palmer v. Wallbridge*, 15 S. C. 650; *McArthur v. Brown*, 13 Q. L. R. 168, and 17 S. C. R. 61; *Cushing v. Davies*, 13 L. C. R. 515; *R. v. DeLéry*, 6 L. N. 402; *Laurier et al. v. Desbarats et al.*, R. J. Q. 9 C. S. 274; *Neill v. Proulx*, R. J. Q. 1 C. S. 565; *Turriff v. Ch. de Fer Quebec Central*, R. J. Q. 2 Q. B. 559; *Webster v. Watters*, 21 R. L. 447; see *Esquimault B. Co. v. Bainbridge*, [1896] Appeal Cases, 561 (construction of "precious metals"); *Att.-Gen. of Brit. Columb. v. Att.-Gen. of Canada*, 1889, 14 Appeal Cases, 295.)

Of these cases most of those in which any general principle has been laid down have been already referred to. In *Turriff v. Quebec Central* R. J. Q. 2 Q. B. 559, there were two points which may be mentioned. 1. in construing an agreement by which lands are conveyed by a private owner to a railway company for the construction of their road, the mining rights will not be presumed to be reserved from the fact that the company cannot work a mine. Although the company cannot work mines, this not being within its statutory powers, it can acquire them and alienate them.

2. If the seller alienates his lands for a nominal price, hoping to gain material advantage from the conveniences to be afforded by the railroad, the alienation is not a donation, and therefore null under Art. 776 of the C. C., unless executed in notarial form. It is a "*contrat synallagmatique*," "*do ut facias*."

In *Webster v. Watters*, 21 R. L. 447, it was held that a contract by which the proprietor of a mine sold to a third party all the minerals which he should be able to extract, did not give the purchaser any real right in the mine. An injunction forbidding the vendor to go on working would not be granted unless it appeared that, without it, the purchaser would be in danger of losing his recourse for non-execution of the contract.

§ 7.—*Price of Mining Concessions.—Reserves of the right of cutting timber thereon.*

I.—PRICE OF MINING CONCESSIONS.

"1443. No sales of mining concessions, containing more than four hundred acres in superficies, shall be made to the same person.

The Lieutenant-Governor in Council has, nevertheless, the right to grant to any person, upon sufficient proof of his capital and resources, a larger extent of territory, but not, in any case, to exceed one thousand acres. 43-44 Vict. c. 12, s. 24, and R. S. Q. 1451 and 1452.

"1444. With such applications to purchase and the production of the documents mentioned in this law, applicants are required to pay

to the Department of Crown Lands the entire price of the mining concessions which they desire to purchase at the following rates:

1. If for the mining of superior metals on lands situated more than twelve miles from a railway in operation, five dollars an acre, and if on lands situated less than twelve miles from such railway, ten dollars an acre;

2. If for the mining of inferior metals on lands situated more than twelve miles from a railway in operation, two dollars an acre, and if on lands situated less than twelve miles from such railway, four dollars an acre. 43-44 Vict. c. 12, s. 29, and R. S. Q. 1457.

"1445. The Commissioner may, from time to time, and as often as circumstances require, offer and put up for sale such number of mining concessions as he may deem proper.

This sale is made by public auction, after notice duly given and published, during at least four weeks, in the Quebec Official Gazette, and at least in one French and one English newspaper, if there be any published in these two languages in each of the cities of Montreal, Quebec and Ottawa.

At each such sale, the upset price or first bid is fixed and determined by the Commissioner, but shall not, in any case, be less than the total amount determined in the preceding article; and the entire price of adjudication is payable in cash, under penalty of the absolute nullity of the sale. 43-44 Vict. c. 12, s. 158, and R. S. Q. 1580.

"1446. Unless stipulated to the contrary in the letters-patent:

1. In concessions for the mining of superior metals, the sale of such concession shall give to the purchaser the right to mine for all metals which may be found therein;

2. In concessions for the mining of inferior metals, the sale of such concession shall give to the purchaser the right to mine for inferior metals only.

"1447. In townships duly erected, as well as in unsurveyed territory, no lands shall be sold under this law, unless there be some real indications of the presence of minerals; and the proof of such indications must be shown by the exhibition of specimens found upon or in such land, accompanied by affidavits of competent and credible persons, establishing that the specimens exhibited came therefrom. 43-44 Vict. c. 12, s. 31, and R. S. Q. 1459.

II.—RESERVE OF RIGHT OF CUTTING TIMBER ON MINING CONCESSIONS.

"1448. The holders of licenses to cut timber, have, under such license, the privilege of cutting on all mining concessions granted, within their limits, pine timber measuring twelve or more inches in diameter, on the stump, and spruce timber measuring nine or more inches in diameter on the stump;

This privilege shall, however, finally expire after a period of three years from the date of the issue of the deed of sale. 43-44 Vict. c. 12, s. 32, and R. S. Q. 1460.

"1449. The letters-patent for Crown land, sold as mining concessions, within the meaning of this law, shall contain a clause reserving all trees of pine or spruce timber, in favor of the Crown; and subject to the provisions of the preceding article, the Commissioner may grant, to any person whomsoever, the right of entering upon the said lands, and cutting and taking therefrom, according to the regulations, the trees so reserved, and making and keeping in repair, across the said mining concessions, all roads necessary for such operations. 43-44 Vict. c. 12, s. 33, and R. S. Q. 1461.

"1450. The purchasers or proprietors of such mining concessions have, in the case of the two preceding articles, the right to cut and take away, for their own use, such trees as they may require for the construction of the buildings and dependencies necessary for their operations. 43-44 Vict. c. 12, s. 33, and R. S. Q. 1461.

§ 8.—*Cancelling of sales of Mining Lands.*

"1451. Mining lands shall be sold on the express condition that the purchaser shall commence *bona fide* the mining of the minerals therein contained, within two years from the date of purchase, and that, during such delay, the purchaser shall, in such working, spend a sum of not less than five hundred dollars, if for superior metals, and of not less than two hundred dollars, if for inferior metals.

The Commissioner may cancel the sale of such mining land in default of the performance of the conditions herein mentioned, according to the mode followed for the cancellation of sales of public lands.

Letters-patent shall be issued only on satisfactory proof that the foregoing conditions have been fulfilled. 43-44 Vict. c. 12, s. 34, and R. S. Q. 1462.

§ 9.—*Licenses.*

I.—EXPLORATION AND PROSPECTING LICENSES.

"1452. Any person, firm or company may, without a license, prospect and search for mines or ores upon public lands, not already occupied as mining concessions or otherwise.

When any such person, firm or company, may desire to enjoy the benefit of such license, he shall obtain from the Commissioner such license for such purpose, on conforming to the provisions of the following article.

"1453. The application for an exploration and prospecting license shall contain as exact a description as possible of the land required, to the satisfaction of the Commissioner, and shall be accompanied by the following fees, as the case may be:

1. If the mine is upon private lands, two dollars for every hundred acres; every less number of acres to count as one hundred;

2. If the mine is upon Crown lands;

a. In surveyed territory, five dollars for every hundred acres; every less number of acres to count as one hundred;

b. In unsurveyed territory, five dollars for each square mile.

Such license is valid for three months and may be renewed. 43-44 Vict. c. 12, s. 22; 47 Vict. c. 22, ss. 4 and 5, and R. S. Q. 1446 and 1447.

"1454. The applicant for an exploration and prospecting license shall furnish good and sufficient security, subject to the approval of the Commissioner, to answer for all losses and damages that he may cause to the proprietor of the soil in making such searches or explorations. 47 Vict. c. 22, s. 5, and R. S. Q. 1448.

"1455. Whoever, under such license, searches and prospects as aforesaid, shall make a report to the Commissioner, or to the Inspector, of the result of his operations. 47 Vict. c. 22, s. 5, and R. S. Q. 1449.

"1456. The holder of such license may afterwards purchase such mine, by paying the prices mentioned in article 1444 and by conforming to the present law, and also to the regulations passed in virtue thereof; the whole, however, subject to the right of preference granted to the proprietor of the soil, to be himself, to the exclusion of all others, the purchaser of the mines and minerals dis-

covered, or which might be afterwards discovered in the soil under his property.

"1457. Articles 1494, 1495 and 1496 apply also, in so far as consistent with the provisions of the preceding articles, to the person, firm or company who, holding a license as above, has discovered a new mine. 47 Vict. c. 22, s. 5, and R. S. Q. 1450.

II.—MINING LICENSES.

1.—*Mining without license forbidden.*

"1458. Every person is prohibited, under pain of the fines and penalties mentioned in Article 1526, from mining in any mine, either upon public or private lands, when the mining rights belong to the Crown, without having previously purchased the same, in virtue of the present law, or without having obtained, to that effect, a mining license, and paid the fee and rent required by Article 1461. 43-44 Vict. c. 12, s. 47, and R. S. Q. 1475.

"1459. Every person, firm or company, is further prohibited, under the penalties mentioned in Article 1528, from commencing mining operations without having given notice in writing, without delay, to the inspector, according to the form of Schedule F, containing the name, the description of the land and the place of domicile of such person, firm or company. 43-44 Vict. c. 12, s. 48, and R. S. Q. 1476.

2.—*Form of Mining Licenses.*

"1460. There are two descriptions of licenses for mining, known as follows, to wit:

1. Private lands license, where the mining rights belong to the Crown;
2. Public lands license.

The first is made in the form of Schedule A of this law, and the second in the form of Schedule B. 43-44 Vict. c. 12, s. 50, and R. S. Q. 1478.

3.—*Granting and duration of licenses.*

"1461. Mining licenses are granted on payment of a fee of five dollars, and of an annual rental of one dollar per acre.

2. Every such license is valid for one year from the date of its issue, and is transferable only with the consent of the Commissioner.

3. It cannot be granted for an extent of over two hundred acres in superficies, unless the Lieutenant-Governor in Council otherwise decides, in virtue of Article 1580.

4. The licensee may, before the expiry of his license, and not later than ten clear days thereafter, renew such license, on payment of a like fee of five dollars, or of any such other sum as may be determined by law, at the time of its issue, and of an annual rental of one dollar per acre.

5. No such mining license can be renewed except upon payment of the said fee and of the said annual rental.

"1462. It shall be lawful for the Lieutenant-Governor in Council whenever he deems it expedient, to require the payment of the royalty, in lieu and stead of fees for a mining license and of an annual rental as aforesaid, except, however, in places in this Province in which the royalty due to the Crown under letters-patent is paid by means of fees for mining licenses. 43-44 Vict. c. 12, s. 52; 47 Vict. c. 22, ss. 9 and 10, and R. S. Q. 1480.

"1463. Every inspector is bound to keep a book in which the licenses are registered, and he must further enter therein, upon notice given under Articles 1492 and 1493, the names of the applicants for a license, the description of mining lands staked out by them under the provisions of Article 1491, and the date of the choice of such land. 43-44 Vict. c. 12, s. 43, and R. S. Q. 1471.

"1464. Such book is to be open to the inspection of any one desiring to examine the same, upon payment of a fee of twenty cents to the inspector. 43-44 Vict. c. 12, s. 43, and R. S. Q. 1471.

4.—*Powers of Licensees on Private Lands.*

"1465. Every holder of a private lands license is authorized to search on any private lands, whenever such private person voluntarily consents or is compelled thereto under the provisions of the following Articles. 43-44 Vict. c. 12, s. 53, and R. S. Q. 1481.

5.—*Arbitration for mining on Private Lands.*

"1466. Every person who desires to mine on the lands of a private person, must first cause to be served a notice in writing, according to the form of Schedule C of this law, stating:

1. That he intends to mine on the lands of such private person;

2. That he is ready to pay the damages arising from such mining operations, to be assessed by mutual agreement. 43-44 Vict. c. 12, s. 55, and R. S. Q. 1483.

"1467. The notice shall give a delay of one month, from the date of the service, to the said private person, to answer and make such agreement, if present, and if absent from the Province, double delay, and in the latter case the notice shall be inserted in French and English, three times in a newspaper of the district, if there is such newspaper, if not, in a newspaper of an adjoining district. 43-44 Vict. c. 12, s. 56, and R. S. Q. 1484.

"1468. Whenever a private person refuses to come to a mutual understanding for mining on his land, the petitioner may then cause a plan of the land, absolutely necessary for his mining operations, to be made by a sworn land surveyor, who, for that purpose, is authorized to enter upon the said property with his employees, and cause to be served upon the said private person another notice, according to the form of Schedule D of this law, containing:

1. A description of the land to be taken for mining purposes;
2. A copy of the land surveyor's plan;
3. A declaration that he is ready to pay a certain sum, in money or rent, as the case may be, as a compensation for the said land or damages, and,
4. The name of a person whom he appoints as his arbitrator, if his offer is not accepted, also a demand upon the said private person to appoint and declare the name of his arbitrator. 43-44 Vict. c. 12, s. 58, and R. S. Q. 1486.

"1469. Every such private person may, however, within the delays aforesaid, take out a mining license to mine his land, in conformity with the present law; provided, however, that he has not divested himself of his right of pre-emption in favor of a third person. 43-44 Vict. c. 12, s. 57, and R. S. Q. 1485.

"1470. The delay to answer such notice is ten clear days, if the opposite party is present in this Province. 43-44 Vict. c. 12, s. 59, and R. S. Q. 1487.

"1471. If the opposite party is absent from the Province, or is unknown, then, upon a petition addressed to the inspector of the mining division in which the land is situated, accompanied by a re-

turn of service, certifying that the said person is absent from the Province, and could not be found therein, the said inspector orders, under his signature, that the notice, drawn up according to the form of Schedule D of this law, be inserted, three times in the French and English languages, during ten days in a newspaper published in such district, if there is such newspaper, if not, then in a newspaper of a neighboring district. 43-44 Vict. c. 12, s. 59, and R. S. Q. 1487.

"1472. The answer, to be given to the said notice, is made in terms of the form of Schedule E of this law. 43-44 Vict. c. 12, s. 59, and R. S. Q. 1487.

"1473. If, during the ten days after the service of the notice, or the eight days following the last publication (as the case may be), the opposite party does not inform the petitioner that he accepts his offers, or does not give the name of the arbitrator appointed by him, then the inspector of the mining division, upon application of the said petitioner, appoints a competent person to be sole arbitrator, to determine the compensation which the opposite party has a right to receive. 43-44 Vict. c. 12, s. 60; 47 Vict. c. 22, s. 17, and R. S. Q. 1488.

"1474. If the opposite party, during the above prescribed delay, notifies to the petitioner the name of the arbitrator whom he has chosen, the two arbitrators jointly name a third. 43-44 Vict. c. 12, s. 61, and R. S. Q. 1489.

"1475. Such arbitrators appointed by the parties must, within eight days after the opposite party has made known the name of his arbitrator, meet to agree upon the choice of a third. 43-44 Vict. c. 12, s. 61, and R. S. Q. 1489.

"1476. If the two arbitrators cannot agree upon the choice of a third, the inspector is bound, upon application of any of the parties, notice of at least two clear days having been previously given to the other, to appoint such third arbitrator himself. 43-44 Vict. c. 12, s. 61, and R. S. Q. 1489.

"1477. The arbitrators or two of them, or the sole arbitrator, after having taken an oath before a justice of the peace of the district, or before the inspector of the mining division, in which such land is situated, to faithfully and impartially fulfil the duties of their office, immediately proceed to establish the compensation to be paid by the petitioner, as the majority may decide; and the award of the arbitrators or of the sole arbitrator, as the case may be, is final and without appeal. 43-44 Vict. c. 12, s. 62, and R. S. Q. 1490.

" 1478. No proceedings can be commenced by the arbitrators before a sum of fifty dollars is deposited with the inspector of the mining division, to defray the costs of the arbitration, and a certificate of the inspector be delivered to them certifying such deposit.

The arbitrators may require the deposit of any other sum deemed necessary during the proceedings. 43-44 Vict. c. 12, s. 62, and R. S. Q. 1490.

" 1479. No award can be given, and no official act done by the majority of the arbitrators, unless at a meeting of which the other arbitrator has received notice, at least two clear days before, of the time and place at which such meeting is to be held.

The service of the notice on the parties is not necessary. 43-44 Vict. c. 12, s. 63, and R. S. Q. 1491.

" 1480. In deciding upon the value or the compensation to be paid, the arbitrators are authorized and required to take into consideration the inconveniences, loss or damages arising from the fact that a third party takes possession or makes use of the land for mining purposes. 43-44 Vict. c. 12, s. 64, and R. S. Q. 1443 and 1492.

" 1481. If the arbitrators are not satisfied with the plan drawn by the land surveyor, as mentioned in Article 1468, they may cause another to be made, at the cost of the petitioner, by any other land surveyor, to whom they have a right to give the necessary instructions. 43-44 Vict. c. 12, s. 65, and R. S. Q. 1493.

" 1482. The arbitrators, in proceeding with such arbitration, must allow only the land, strictly requisite for mining purposes, which can, in no case, exceed fifteen acres in superficies, over and above the land deemed necessary, on the same property, for right of way with horses and vehicles to and from the nearest highway. 43-44 Vict. c. 12, s. 66, and R. S. Q. 1494.

" 1483. The costs are paid by the petitioner, except, however, those of the arbitrator of the opposite party, which are paid by him, if the award does not allow him a higher compensation than that offered before the arbitration.

In all cases, the costs are taxed by the inspector of the mining division. 43-44 Vict. c. 12, s. 67, and R. S. Q. 1495.

" 1484. The arbitrators may swear the parties and their witnesses, and, in their discretion, interrogate them under oath or solemn affirmation. 43-44 Vict. c. 12, s. 68, and R. S. Q. 1496.

" 1485. In the case of a sole arbitrator, if the latter dies before giving his award, or if he becomes ill, or refuses, or neglects to act, within a reasonable delay, the inspector, upon satisfactory proof thereof, appoints another in his stead; but the latter arbitrator cannot recommence or repeat any of the previous proceedings. 43-44 Vict. c. 12, s. 69, and R. S. Q. 1497.

" 1486. When the award of the arbitrators is given, the amount of the damages awarded and costs must be paid into the hands of the inspector of the mining division having jurisdiction. 43-44 Vict. c. 12, s. 70, and R. S. Q. 1498.

" 1487. The inspector must give a receipt for the sums so paid; but no work shall be commenced, without the express permission of the inspector, or before the amount of the compensation has been paid or lawfully tendered to private person or to the proprietor of the soil. 43-44 Vict. c. 12, s. 71; 47 Vict. c. 22, s. 18, and R. S. Q. 1499.

" 1488. The amount of the compensation, and the costs so paid, are afterwards distributed, within the shortest possible delay, by the inspector, to the persons entitled thereto. 43-44 Vict. c. 12, s. 72, and R. S. Q. 1500.

" 1489. Every petitioner, as aforesaid, may also, by following the procedure above set forth, obtain from neighboring proprietors and others, the right of way over their lands with horses and vehicles, and the right to make the works necessary thereon for conveying the water required by him for the better working of his mining lands; provided, however, that he does not apply for any thing which might have the effect of turning the course of any spring, river or stream, so as to deprive the inferior riparian proprietors of the use of such spring, river or stream. 43-44 Vict. c. 12, s. 73, and R. S. Q. 1501.

" 1490. The preceding article is applicable to every person who works a mine of any kind in this Province. 43-44 Vict. c. 12, s. 73, and R. S. Q. 1501.

6.—Miscellaneous provisions respecting applicants for, and holders of licenses, and persons working mines.

" 1491. Every applicant for a license to mine upon public lands, has a right to plant a wooden picket at each corner of the lot for which he desires to obtain such license. 43-44 Vict. c. 12, s. 77, and R. S. Q. 1504.

" 1492. Every such applicant, after having staked out the location of his land in the manner determined in the preceding article, is bound to give written notice thereof, without delay, to the mining inspector, in the form of Schedule F of this law. 43-44 Vict. c. 12, s. 81, and R. S. Q. 1508.

" 1493. Such notice shall give the name of the applicant, indicate the place where the land is situated, contain a complete designation and description of the land, and mention where such applicant elects his domicile, under the penalties mentioned in Article 1528. 43-44 Vict. c. 12, s. 81, and R. S. Q. 1508.

" 1494. The discoverer of a new mine on public lands is entitled to a free mining license, in the form of Schedule J of this law, valid for twelve months, for the area allowed by Article 1461, or by any regulations which may be issued under it, and in force when such discovery is made; provided that such discovery has been immediately reported, in writing, to the inspector of the mining division. 43-44 Vict. c. 12, s. 83, and R. S. Q. 1510.

" 1495. Any one, who does not immediately report such discovery, shall be deprived for the space of one year, of the right to mine on public lands. 43-44 Vict. c. 12, s. 83, and R. S. Q. 1510.

" 1496. No person is considered to be the discoverer of a new mine, unless the place of the alleged discovery is in a region unknown as a mining region, or at least at a distance of thirty miles from the nearest mine. 43-44 Vict. c. 12, s. 84, and R. S. Q. 1511.

" 1497. Every person holding a mining license, upon renewing the same, is bound, under penalty of the refusal of such renewal, to make to the inspector of the mining division, in addition to the annual statement which he is bound to furnish in virtue of the following Article, a full and true statement, under oath, of the work performed, and of the minerals obtained by him, during the term of such license, which statement may be entered upon the expiring license. 43-44 Vict. c. 12, s. 86, and R. S. Q. 1513.

" 1498. Every person working a mine must furnish, during the month of January, every year, a sworn statement of his operations for the previous year, containing the quantity of the mineral extracted, its value at the mine, and the number of workmen employed, as also a statement giving the names of persons killed or wounded in working the mines.

"1499. No title to a mining concession or license shall, without the formal consent of the proprietor of the soil, give a right to mine, or to open pits or galleries, or to erect machines or stores, in fields, yards or gardens, or upon lands close to dwelling houses, or boundary fences, within a distance of three hundred feet from such fences or dwellings, nor even to enter such yards or habitations. 43-44 Vict. c. 12, s. 76, and R. S. Q. 1444 and 1503.

"1500. Every person, who prospects or mines for minerals upon lands adjoining a mining division, is subject to the provisions of this law, as if he worked within the limits of such mining division. 43-44 Vict. c. 12, s. 98, and R. S. Q. 1525.

"1501. Every licensee, under this law, is bound, under the penalties mentioned in Article 1538, whenever required so to do, to exhibit his license to the inspector of the division, or to any constable or peace officer deputed by the said inspector, and to prove to the satisfaction of every such officer, making such demand, that the license which he holds is in force. 43-44 Vict. c. 12, s. 99, and R. S. Q. 1526.

"1502. Every licensee is bound, under the penalties mentioned in Article 1539, to allow the inspector of the mining division, or any constable or other peace officer, deputed by the said inspector, to enter upon the lands which he works, and to afford them all necessary facilities and assistance for that purpose. 43 & 44 Vict. c. 12, s. 100, and R. S. Q. 1527.

III.—MILL OR MACHINE LICENSE.

1.—*Price of License.*

"1503. Every person, who desires to employ or make use of any mill or machinery, other than those worked by hand, for crushing quartz or reduction of quartz, or the obtaining of gold and silver therefrom, by crushing, stamping, amalgamating or otherwise, is required, under the penalties mentioned in Article 1535, to obtain beforehand a special license therefor, from the inspector of the mining division, upon payment of a fee of five dollars.

Such license is in the form of Schedule H of this law. 43-44 Vict. c. 12, s. 90, and R. S. Q. 1517.

2.—*Duties of Mill or Machine owners.*

"1504. Every licensed mill or machine owner, as aforesaid, is required, under the penalties mentioned in Article 1536, to keep an

account book, in which he is bound to enter a clear and distinct statement of all quartz crushed, reduced or amalgamated by such mill or machine, and also the following particulars:

1. The name of the owner or owners of each distinct parcel or lot of quartz crushed;
2. The weight of each such parcel or lot;
3. The date of the crushing of the same;
4. The actual yield in weight of mineral obtained from each such parcel or lot;
5. The description of the mining land worked. 43-44 Vict. c. 12, s. 91, and R. S. Q. 1518.

"1505. Every owner of a licensed mill or machine is bound, under the penalties mentioned in Article 1536, to furnish, monthly, to the inspector of the mining division, a return under oath, compiled from the book, containing the aforesaid statements and details for each and every day of the month then last past, together with such other information as the inspector or the Lieutenant-Governor in Council may require. 43-44 Vict. c. 12, s. 92, and R. S. Q. 1519.

§ 10.—*Special provisions respecting mining.*

I.—PARTY WALLS OR PASSAGES.

"1506. A party wall or passage, at least three feet thick, shall be left between each holding worked as well on public as on private lands; which said party wall or passage is to be used in common by all parties as a mode of access to the stream, where one exists; and no one shall obstruct such party wall or passage by throwing soil, stones or other material thereon, under the penalties mentioned in Article 1530. 43-44 Vict. c. 12, s. 93, and R. S. Q. 1520.

"1507. Any person interested may, at any time, remove a party wall or passage as aforesaid, if he thinks it necessary, but he shall, if required so to do, construct a new mode of access to the water, offering the same facilities as an approach as the party wall or passage so removed, under the penalties enacted in Article 1531; but such removal cannot be effected without the written permission of the inspector of the mining division, who shall summarily decide, after hearing the adverse party or, in his absence, if he has been duly notified. 43-44 Vict. c. 12, s. 94; 47 Vict. c. 22, s. 21, and R. S. Q. 1521.

II.—DAMAGES RESULTING FROM MINING OPERATIONS.

"1508. No person working mines shall cause any damage or injury to the occupant of any other mining land by throwing earth, clay, stones or other material upon such other land, or by causing or allowing any water which may be pumped or baled, or may flow from his land, to flow into or upon such other land, under the penalties mentioned in Article 1532, over and above the damage caused. 43-44 Vict. c. 12, s. 95, and R. S. Q. 1522.

III.—WATER-COURSES AND EXCAVATIONS.

"1509. Every miner, who makes a pit, shaft or any excavation whatever, to a depth of four feet and over, is bound, under the penalties mentioned in Article 1537, to enclose the same with a fence, at least four feet in height, if he discontinues working the same for a period of eight days. 43-44 Vict. c. 12, s. 97, and R. S. Q. 1523.

"1510. All owners of claims and mining locations, bounded by water-courses or rivers, upon public as well as upon private lands, may make use of such water-courses or rivers in working their respective claims or locations, but without hindering each other, subject in all cases to the provisions of Article 1489, if they apply. 43-44 Vict. c. 12, s. 96, and R. S. Q. 1524.

"1511. Every dispute, arising between the parties on the subject, is settled and decided by the inspector of the mining division; and whosoever disobeys the order of the inspector is liable to the penalties mentioned in Article 1533. 43-44 Vict. c. 12, s. 96, R. S. Q. 1524.

§ 11.—*Inspectors and other officers.*

I.—APPOINTMENT.

"1512. The Lieutenant-Governor in Council may, on the recommendation of the Commissioner, appoint all inspectors, policemen or police force and other officers (except constables) deemed necessary for the carrying out of the present section, fix their rank and salaries, and prescribe their duties not formally herein prescribed. 43-44 Vict. c. 12, s. 36, and R. S. Q. 1464.

"1513. The inspectors must be mining engineers, possessing sufficient knowledge of mineralogy and metallurgy, and have exercised their profession during, at least, five years.

"1514. The inspectors may be appointed for one or more mining divisions, as the Lieutenant-Governor in Council thinks proper, under the name of "Inspector for the mining division of (name of the division) or for the mining divisions of (name of the divisions)," as the case may be. 43-44 Vict. c. 12, s. 37, and R. S. Q. 1465.

"1515. If, in any mining division, no inspector has been appointed, or if there is one, and he is unable, for any reason whatsoever, to perform the duties of his office, or, if such office is vacant, the Commissioner may order an officer of his department or any other competent person to temporarily perform the duties of inspector in such division. 43-44 Vict. c. 12, s. 38, and R. S. Q. 1466.

"1516. The policemen or police force are subject to the regulations established by the Lieutenant-Governor in Council; and such policemen and members of the police force so appointed have, while they are in office, all the powers and immunities of constables and peace officers, and all such extraordinary powers and authority as the Lieutenant-Governor in Council may confer on them. 43-44 Vict. c. 12, s. 39, and R. S. Q. 1467.

"1517. They may also be employed in such duties as the Lieutenant-Governor may, from time to time, determine. 43-44 Vict. c. 12, s. 39, and R. S. Q. 1467.

"1518. All inspectors and other officers appointed under this law are under the general control and management of the Commissioner. 43-44 Vict. c. 12, s. 35, and R. S. Q. 1463.

II.—POWERS AND DUTIES.

"1519. Every inspector or other officer who receives public moneys, under the present law, is accountable therefor to the Commissioner, into whose hands he is bound to pay the same, at the dates and in the manner prescribed by the latter. 43-44 Vict. c. 12, s. 40, and R. S. Q. 1468.

"1520. In rendering his accounts to the Commissioner, the inspector shall transmit, in addition to the information required, a return showing the sums collected by him, and the names of the persons who have obtained licenses. 43-44 Vict. c. 12, s. 40, and R. S. Q. 1468.

"1521. The inspector of a mining division may, with the approval of the Commissioner, from time to time, appoint constables to the

number of twelve at most; the persons so appointed are hereby respectively constituted constables and peace officers, for the purposes of this law, for the time and in the mining divisions for which they are respectively appointed.

2. The inspector has special control over the constables and police force appointed for his division. 43-44 Vict. c. 12, ss. 41 and 42, and R. S. Q. 1469 and 1470.

"1522. He may give such orders or make such regulations, subject to the approval of the Commissioner, as he may deem expedient, respecting the general government of such officers, their classification, rank and particular services, their distribution, inspection, and place of residence.

He has absolute power, at any time, to suspend them from their functions, and, with respect to constables, to remove them, with the approval of the Commissioner. 43-44 Vict. c. 12, s. 42, and R. S. Q. 1470.

"1523. All such constables, while in office, have all the powers, authority, rights and privileges conferred on the police force of the cities of Montreal and Quebec respectively, by the provisions of sections one and four of chapter first of title seventh of these Revised Statutes. 43-44 Vict. c. 12, s. 42, and R. S. Q. 1470.

"1524. Every inspector, constable or peace officer, in a mining division, may, at any time, enter upon private or public lands that are being mined in the said division, and examine the pits, shafts, tunnels, subterranean passages or other mining works or excavations constructed or commenced in any manner whatsoever, and require, from the proprietors of such pits, shafts, tunnels and other mining works, and from their employees, all the facilities and assistance necessary for that purpose. 43-44 Vict. c. 12, s. 45, and R. S. Q. 1473.

"1525. No inspector of a mining division, under the penalties mentioned in Article 1540, can, at any time, either directly or indirectly, so long as he is in office, take any share, in his own name, or in the name of another for him, in the working of the mines at large in the mining division for which he has been appointed. 43-44 Vict. c. 12, s. 46, and R. S. Q. 1474.

§ 12.—Penalties.

"1526. Every person, who works a mine in public or private lands, when the claim belongs to the Crown, without having first ac-

quired the same under the present law, or without having first obtained a license and paid the fee and rental required by Article 1461; is liable to a fine of two hundred dollars and costs for every contravention, and, in default of payment, to imprisonment for a period not exceeding three months. 43-44 Vict. c. 12, s. 102, and R. S. Q. 1528 and 1529.

"1527. Every owner of mining land who sells, cedes, transfers or alienates his mining right, without having given notice to the Commissioner of Crown Lands within thirty days after such sale, transfer or alienation, is liable to a fine of fifty dollars and costs, and, in default of payment, to an imprisonment of three months.

"1528. Every person, who commences mining, or every applicant for a license who has staked out a mining lot, in conformity with Article 1491, without having furnished to the inspector the name of the person, the full designation and description of his mining land and declared his place of residence, is liable to a fine not exceeding twenty-five dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 103, and R. S. Q. 1530.

"1529. Every person, who, by himself or his agents, employs a woman or a girl, or who employs any male child in the working of such mine, contrary to the provisions of Article 1548, is liable to a fine not exceeding twenty dollars for each offence and the costs, and, in default of payment, to an imprisonment not exceeding one month.

"1530. Whosoever obstructs a party wall or passage upon lands worked as mines under this law, by throwing thereon earth, stones or other material, is liable to a fine not exceeding five dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 104, and R. S. Q. 1531.

"1531. Whosoever removes a party wall or passage and does not, if thereunto required, provide another mode of access to the water-course, is liable to the penalty mentioned in the preceding article. 43-44 Vict. c. 12, s. 105, and R. S. Q. 1532.

"1532. Whosoever, while engaged in mining, causes damage or injury to the occupant of another mining land by throwing earth, clay, stones or other material in and upon such claim, or by causing or allowing any water, which may be pumped or baled or which may flow from his claim, to flow into or upon such land, is liable to a fine not exceeding five dollars and costs, and, in default of payment to

imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 108, and R. S. Q. 1533.

"1533. Whosoever, in working a mine, does not comply with the decision of the inspector with respect to the use he is to make of a water-course, canal, drain, shoot, or other aqueduct, is liable to a fine not exceeding fifty dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 107; 47 Vict. c. 22, s. 22, and R. S. Q. 1534.

"1534. Any person, found removing or disturbing intentionally, any stake or picket planted under the provisions of this law, is liable to a fine not exceeding ten dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 108, and R. S. Q. 1535.

"1535. Whosoever makes use of any mill or machine, other than those worked by hand, within or near any mining division, for the crushing or reduction of quartz or the obtaining of gold therefrom, by crushing, stamping, amalgamating or otherwise, without a license therefor, is liable to a fine not exceeding one hundred dollars and costs, and, in default of payment, to imprisonment for a period not exceeding two months. 43-44 Vict. c. 12, s. 109, and R. S. Q. 1536.

"1536. Every licensed mill or machine owner, or, in the case of an incorporated company, every manager or agent thereof, who omits to enter the statement of any of the details which he is required to enter, in his book, under Articles 1504 and 1505, or delays sending in the return which he is bound to make, is liable, for every day of such omission or delay, to a fine not exceeding twenty dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 110, and R. S. Q. 1537.

"1537. Every person, who discontinues working in any pit, shaft or excavation whatsoever of four feet or more in depth, without fencing in the same to a height of at least four feet, is liable, for each offence, to a fine not exceeding fifty dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 111, and R. S. Q. 1538.

"1538. Every licensee, who, when required so to do, refuses to exhibit his license to the inspector of the mining division, or to any constable, or peace officer deputed by such inspector, is liable to a fine

not exceeding five dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 112, and R. S. Q. 1539.

"1539. Every person, engaged in mining upon any land whatever, who refuses to allow the inspector of the division, or any constable or peace officer, authorized by such inspector, to enter, for the performance of their official duties, upon the lands on which he is so working, or, who refuses, when thereunto required, to afford them the facilities and assistance necessary for such purpose, is liable to a fine not exceeding five dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one month. 43-44 Vict. c. 12, s. 113, and R. S. Q. 1540.

"1540. Every inspector of mines, who, while he is in office, takes a share in the working of the mines generally, either in his own name or in that of another for him, directly or indirectly, is liable (in addition to dismissal from office, and the nullity of the title or interest which he has obtained) to a fine not exceeding four hundred dollars and costs, and, in default of payment, to imprisonment for a period not exceeding one year. 43-44 Vict. c. 12, s. 114, and R. S. Q. 1541.

"1541. Every witness lawfully summoned, who refuses to appear or to take the oath and to answer, is liable to a fine of five dollars and costs, for every such refusal, or to be imprisoned until he consents to take the oath or affirmation and to answer. 43-44 Vict. c. 12, s. 115, and R. S. Q. 1542.

"1542. Every person, who, knowingly or under reasonable belief that an arrest under this law is to be made, prevents the arrest of any one violating this law, is liable to a fine not exceeding forty dollars, and, in default of payment, to imprisonment for a period not exceeding two months. 43-44 Vict. c. 12, s. 148, and R. S. Q. 1570.

"1543. Every person, contravening this law or any order or regulation made under it, where no other penalty or punishment is imposed, is liable, for every day on which such contravention occurs, continues, or is repeated, to a fine not exceeding twenty dollars and costs, and, in default of payment, to imprisonment not exceeding one month. 43-44 Vict. c. 12, s. 121, and R. S. Q. 1543.

"1544. Every term of imprisonment counts from the day of incarceration. 43-44 Vict. c. 12, s. 149, and R. S. Q. 1571.

§ 13.—*Riots in the neighborhood of mines.*

"1545. The Lieutenant-Governor in Council may, by proclamation, whenever he deems it necessary, declare that section eleventh of chapter eighth of title fourth of these Revised Statutes, respecting riots near public works, shall apply to one or more mining divisions, in so far as its provisions may be applicable; the said section shall have force of law, from and after the date of such proclamation, in the mining division or divisions mentioned in the proclamation. 43-44 Vict. c. 12, s. 125, and R. S. Q. 1546.

"1546. The Lieutenant-Governor in Council may, in the same manner, from time to time, declare the said section to be no longer in force in such mining division or divisions and again put the same in force, when he deems it advisable. 43-44 Vict. c. 12, s. 125, and R. S. Q. 1546.

"1547. No such proclamation can have any effect within the limits of a city. 43-44 Vict. c. 12, s. 125, and R. S. Q. 1546.

§ 14.—*Protection of workmen in mines.*

"1548. No woman or girl shall be employed in the working of any mine.

2. No male child under fifteen years shall be employed in the underground works of any mine or quarry.

3. No male child of fifteen years but under seventeen years shall be employed in a mine as above, more than forty-eight hours per week, said week being considered as beginning at midnight on Sunday and ending at midnight on the following Saturday.

4. No male child of less than twenty years shall be employed in working machinery in or near a mine, with the exception of machinery put in motion by horses or other animals, in which case their driver may be sixteen years of age.

"1549. Every proprietor of a mine in operation, who by himself or his agents, contravenes the provisions of the preceding article, is subject to the penalties mentioned in Article 1529.

"1550. Regulations may be made by the Lieutenant-Governor in Council, respecting the sanitary condition and safety of the works in mines, so as to protect the life and health of the workmen therein employed.

Such regulations, after their promulgation in the Official Gazette, become law, and a copy of the same shall be posted up in the most conspicuous places of the mine, in conformity with the instructions of the mining inspector.

" 1551. Every three months, the inspector shall make a report to the Commissioner with respect to the fulfilment of the provisions of the present paragraph within the limits of his mining division.

§ 15.—*Sale of Intoxicating Liquors near mines in operation.*

" 1552. The sale or exchange of intoxicating liquors, within a radius of seven miles of any mine in operation, is prohibited unless a license to that effect has been obtained from the inspector of the mining division, in conformity with section twelfth of chapter fifth of title fourth of these Revised Statutes, under the penalties set forth in the 893rd and following articles. 43-44 Vict. c. 12, s. 49, and R. S. Q. 1477.

" 1553. The inspector of a division has the supervision of those who therein sell intoxicating liquors; he alone may refuse or grant such licenses and cancel the same within such radius of seven miles. 43-44 Vict. c. 12, s. 49; 45 Vict. c. 14, s. 1, and R. S. Q. 1477.

§ 16.—*Prosecutions.*

I.—LAWS APPLICABLE.

" 1554. All the provisions of this law, relating to indictable offences or summary convictions, as well as to the proceedings to be adopted in each of such cases, shall be so interpreted that the Revised Statutes of Canada, chapters one hundred and seventy-four and one hundred and seventy-eight shall be applicable thereto, as also the provisions of Articles 2713 to 2720 of these Revised Statutes. 43-44 Vict. c. 12, s. 126, and R. S. Q. 1547.

II.—IN WHOSE NAME BROUGHT.

" 1555. Prosecutions for the recovery of royalties due to the Crown, for sums due for the purchase of mining concessions or mining rights, and for mining or exploration licenses, are brought in the name of the Commissioner of Crown Lands, before any court of competent civil jurisdiction, and other prosecutions for contraventions of this law are brought in the name of a complainant or by the collector of provincial revenue for the district in which such offence was com-

mitted. 43-44 Vict. c. 12, s. 127; 47 Vict. c. 22, s. 23, and R. S. Q. 1548.

III.—INSPECTOR'S COURT AND JURISDICTION.

"1556. Prosecutions for the recovery of fines imposed by this section, or by the regulations made in virtue thereof, for the recovery of fees exigible thereunder, other than those mentioned in the preceding article, and for all contraventions of the provisions thereof, are brought before the inspector of each mining division, having jurisdiction. 43-44 Vict. c. 12, s. 128, and R. S. Q. 1549.

"1557. The inspector of each mining division is, *ex officio*, a justice of the peace for the district which may comprise or include, in whole or in part, the mining division, for which he has been appointed, or in which district or portions thereof there may be one or more mining divisions, in which he is bound to perform his duties. 43-44 Vict. c. 12, s. 129, and R. S. Q. 1550.

"1558. It shall not be necessary that the inspector have any property qualification, to allow of his lawfully acting as a justice of the peace. 43-44 Vict. c. 12, s. 130, and R. S. Q. 1551.

"1559. As a justice of the peace, the inspector (except in suits relating to rights or titles to immovable property, in which he must decline to act, if such cases occur), possesses the jurisdiction, authority, rights and privileges which may be conferred, by the laws then in force, upon any police magistrate, district magistrate, judge of the sessions of the peace, justice of the peace, sheriff or recorder throughout the whole extent of the territory, for which he has been appointed.

2. He decides, in a summary manner, all contestations respecting the dimensions or boundaries of mining lands under mining license, the use of water-courses and the access thereto.

His decision is final and without appeal, in all things within his jurisdiction.

3. He takes cognizance of and finally determines all suits of a purely personal nature, and those affecting movables, between persons or companies engaged in mining, or their agents, or other persons or companies; and *vice versa*; providing the amount in dispute does not exceed twenty-five dollars.

The proceedings are summary. 43-44 Vict. c. 12, ss. 131 and 132; 47 Vict. c. 22, s. 24, and R. S. Q. 1553 and 1554.

"1560. For the execution of judgments under this law, the proceedings are the same as those in the Circuit Court. 47 Vict. c. 22, s. 24, and R. S. Q. 1554.

"1561. The inspector may:

1. By writ of summons, cause defendants to appear before him,
2. Summon any person who is pointed out to him as an important witness in a case;
3. Condemn a witness to the penalties mentioned in Article 1541, whenever he refuses to appear, when lawfully summoned, or to take the oath and to answer;
4. Receive and cause to be taken in writing, upon the application of the plaintiff or of the defendant in his discretion, the depositions of the witnesses then present, and adjourn the case to a future day, which he shall then fix for such purpose;
5. Determine such complaint, in the presence or absence of the defendant, in a summary manner, upon the evidence given under oath by one or more witnesses, sworn before him, and levy such sum as he may adjudge to be due by such person or company to such laborers or servants, together with such costs as he may deem proper, by a warrant of distress and sale of the defendant's goods and chattels;
6. Convict, within his division, upon view, any person for any contravention, punishable under the provisions of this law or the regulations made in virtue thereof. 43-44 Vict. c. 12, ss. 134, 135, 136, 137, 138, 139 and 140, and R. S. Q. 1555, 1556, 1557, 1558, 1559, 1560 and 1561.

IV.—CLERKS OF INSPECTORS.

"1562. The clerks of inspectors of mining divisions shall be appointed by the Commissioner of Crown Lands and shall be entitled to the same fees as clerks of commissioners' courts or clerks of justices of the peace, as the case may be. 47 Vict. c. 22, s. 25, and R. S. Q. 1562.

V.—PROCEDURE.

"1563. In any prosecution, instituted under this section, it is not necessary, in the declaration, information, complaint or summons, to allege any negative fact or any fact which it is the duty of the defendant to prove. 43-44 Vict. c. 12, s. 143, and R. S. Q. 1565.

"1564. Any declaration, complaint or summons may be amended, without costs, if there be any defect in the form thereof, and, upon such amendment, the defendant may obtain a further delay to plead and adduce evidence. 43-44 Vict. c. 12, s. 144, and R. S. Q. 1566.

"1565. It is not necessary, in a complaint, to state the exact day on which the offence was committed; it is sufficient that the day and hour be approximately stated. 43-44 Vict. c. 12, s. 145, and R. S. Q. 1567.

"1566. The fees to which bailiffs, constables and clerks of inspectors of mining divisions are entitled are those mentioned in Articles 2585 to 2592, which fees each is respectively allowed to collect; but, as regards the fees of advocates and other costs, they are taxed in a reasonable and equitable manner, in the discretion of the inspector. 43-44 Vict. c. 12, s. 146; 49-50 Vict. c. 34, s. 1, and R. S. Q. 1568.

"1567. Every service, under this law, is made by a bailiff of the Superior Court, or a constable appointed for the mining division in which the suit is instituted, by leaving a copy, certified by the inspector of the said division, with the defendant personally, or with a reasonable person of his family, at his domicile or place of business. 43-44 Vict. c. 12, s. 141, and R. S. Q. 1563.

"1568. The return of service by a bailiff is made under his oath of office.

That made by a constable is proved by a certificate, sworn before a justice of the peace or the inspector of the mining division. 43-44 Vict. c. 12, s. 142, and R. S. Q. 1564.

VI.—EXECUTION OF JUDGMENTS.

"1569. In default of immediate payment of the fine and costs, the inspector may either cause the defendant to be imprisoned at once, or cause the defendant's goods and chattels to be seized and sold to pay the same; and, if he have no goods and chattels or not sufficient goods and chattels, cause him to be imprisoned for the period mentioned in the judgment.

Nevertheless, the defendant may, at any time, obtain his discharge by paying the fine and costs. 43-44 Vict. c. 12, s. 147, and R. S. Q. 1569.

"1570. No appeal lies from any conviction by or judgment of the inspector, in conformity with the provisions of this law. 43-44 Vict. c. 12, s. 150, and R. S. Q. 1572.

§ 17.—*Miscellaneous Provisions.*

I.—APPLICATION OF DUES, FEES AND FINES.

"1571. All dues, fees and fines collected under this law, as well as the price of mining concessions, unless otherwise provided, form part of the consolidated revenue fund of this Province. 43-44 Vict. c. 12, s. 151, and R. S. Q. 1573.

"1572. Any proportion of such dues, fees and fines may, from time to time, be applied, by the Lieutenant-Governor in Council, towards meeting the expenses incurred in carrying out this law. 43-44 Vict. c. 12, s. 151, and R. S. Q. 1573.

"1573. The fines are applied as follows:

1. If the fine and costs are wholly recovered in the name of a complainant, after the costs are paid, one-half of the penalty belongs to such complainant, and the balance is paid to the Provincial Treasurer;

2. If the fine and costs have not been wholly recovered, then, after payment of the costs, the balance is distributed in the proportion indicated in the preceding paragraph. 43-44 Vict. c. 12, s. 152, and R. S. Q. 1574.

The aforesaid distribution is made by the inspector of the mining division himself. 43-44 Vict. c. 12, s. 143, and R. S. Q. 1575.

II.—GEOLOGICAL EXPLORATIONS.

"1575. The Commissioner of Crown Lands may, from time to time, and so often as he may deem advisable, cause geological explorations or other searches to be made, in order to ascertain what lands contain ores or minerals of any kind. 43-44 Vict. c. 12, s. 156, and R. S. Q. 1578.

"1576. He may, at the same time, cause to be surveyed, and boundaries and limits set to mining concessions, in localities which are not yet subdivided, and, in his discretion, cause each lot to be marked out in accordance with the meaning of this law. 43-44 Vict. c. 12, s. 156, and R. S. Q. 1578.

III.—SALE OF LANDS, AND RESERVES OF MINING LANDS.

"1577. Lands sold by the Crown for the working of mines in general shall be sold in conformity with the provisions of this law. 43-44 Vict. c. 12, s. 154, and R. S. Q. 1576.

"1578. The Commissioner may, when he sees fit, reserve and withhold from sale, for colonization purposes, lands in which the existence of mines, which may be worked, has been established, with the object of selling them, at a suitable time, as mining concessions. 43-44 Vict. c. 12, s. 157, and R. S. Q. 1579.

IV.—VALUATION OF TAXABLE MINING LANDS.

"1579. In making the valuation of taxable mining lands in a municipality, in which there exists an immovable property, containing a mine which is being worked, the valuers shall, up to the 24th July, 1900, value such immovable, without taking into consideration the increased value arising from the existence of such mine, and minerals, ores, pits, shafts, excavations, tunnels, mills, machines and other buildings, structures and dependencies used or to be used exclusively for the working of such mine. 43-44 Vict. c. 12, s. 122, and R. S. Q. 1544.

Stevenson v. Wallingford, R. J. Q. 6 C. S. 183; see note on 1424.

V.—REGULATIONS BY THE LIEUTENANT-GOVERNOR.

"1580. The Lieutenant-Governor in Council may, from time to time, make any regulations which he may deem necessary or expedient:

1. For diminishing or increasing the size of lands for which mining licenses are granted under this law, or for altering the shape thereof;
2. For altering the price, terms and conditions of mining licenses, and for increasing the price of mining concessions;
3. For reserving land found to be rich in mines and minerals, or for withdrawing them temporarily from sale;
4. For classifying, in one of the two categories of paragraph 11 of Article 1421, such ores and minerals which are not therein specially named, or for changing the category of those already therein named;
5. For the opening, construction, maintenance and use of the shafts, conducts, sluices, through or upon claims or mining concessions, or on lands under mining license, to facilitate the carriage and passage of water for mining purposes;
6. For erecting into mining divisions any part of the Province which he may deem proper, for enlarging or diminishing, from time to time, such divisions, or for abolishing them at any time he may consider necessary;

7. For establishing and maintaining roads through mining divisions and generally for the better carrying out of the provisions of the present law.

All such regulations, after being published in the Quebec Official Gazette, shall have force of law. 43-44 Vict. c. 12, s. 124; 49-50 Vict. c. 30, s. 1, and R. S. Q. 1546.

§ 18.—*Final Provisions.*

"1581. The Commissioner shall submit, with his annual return to the Legislature, a statement respecting mines in this Province. 43-44 Vict. c. 12, s. 159, and R. S. Q. 1581.

"1582. The forms 1, 2, 3, 4, 5, 6 and 7 of the present law, or any other forms to the same effect, may be employed whenever deemed necessary." 43-44 Vict. c. 12, s. 163, and R. S. Q. 1582.

2. The Acts 54 Victoria, chapters 15 and 16, are hereby repealed.

3. The present Act shall not affect any promises of sale of mining concessions which may have been made, under the provisions of the Act 54 Victoria, chapter 15, for a greater extent than that authorized by the present law, nor shall it affect any acquired rights.

4. The present Act shall come into force on the day of its sanction.

CHAPTER XVI.

NEW BRUNSWICK.

"The General Mining Act," as amended in 1892, 1893 and 1896.

An Act Relating to Mines and Minerals.

Passed 16th April, 1891.

BE it enacted by the Lieutenant-Governor, Legislative Council, and Assembly, as follows:—

1. This Act may be cited as "The General Mining Act."¹

¹This Act has been amended as follows:

(1) By 55 Vict. (1892) Chap. X. (passed 7th April, 1892).

For sec. 1 of which, see sec. 101, sub-sec. 6, of this Act.

" 2 " " 139A of this Act.

" 3 " " 138B " "

" 4 " " 139A " "

(2) By 56 Vict. (1893) Chap. X. (passed 15th April, 1893.)

For sec. 1 of which, see sec. 2, s.-ss. (1), (2), of this Act.

" 2 " " 5 " "

" 3 " " 9 " "

" 4 " " 32 " "

" 5 " " 34 " "

" 6 " " 53 " "

" 7 " " 59, 85 " "

" 8 " " 81 " "

" 9 " " 82 " "

" 10 " " 89 " "

" 11 " " 96, s.-ss. (d), (e), " "

" 12 " " 97 " "

" 13 " " 97A " "

" 14 " " 42A " "

" 15 " " Schedule C. " "

" 16 " " 101 " "

(3) By 59 Vict. (1896) Chap. XXVII. (passed 20th March, 1896)

For sec. 1 of which, see sec. 6A of this Act.

" 2 " " 104 " "

2. Where the following words occur in this Act, and in Orders in Council or Regulations under the Act, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears.

(1) The word "mine" shall mean any locality in which any vein, stratum or natural bed of coal or metalliferous or mineral bearing ore or rock or salt bed or rock or salt springs, exist or may be worked.

(2) The verb "to mine" and participle "mining" shall mean and include any mode or method of working whatsoever, whereby the soil or earth, or any rock, stone or quartz may be disturbed, removed, carted, carried, washed, sifted, smelted, refined, crushed or otherwise dealt with for the purpose of obtaining any mineral, metal or metals, therefrom, and shall also mean and include any method of obtaining, removing and manufacturing salt, by obtaining the salt brine, and evaporating the same.¹

¹ Inserted by 56 Vict. (1893) c. 10, which repealed ss. 1 and 2 of the principal Act.

- (3) "Mining Division" shall mean and include any tract of country declared to be a mining division within this Act;
- (4) "Gold-bearing quartz" shall be held to mean all auriferous rock *in situ*;
- (5) "Alluvial Mine" shall be held to mean gold-bearing earth or rock elsewhere than *in situ*;
- (6) "Party Wall" shall mean a bank of earth or rock left between two excavations;
- (7) "Lessee" shall include and mean sub-lessee, or any person deriving title to a mine through a lessee of the Crown;
- (8) "Licensed Mills" shall signify mills and machinery licensed;
- (9) "Mill Owners" a person or persons to whom such licenses shall be granted;
- (10) "Licensee" is held to mean any person holding a license under this Act;
- (11) "Prospecting License" shall signify license to search for mines of gold, or gold and silver;

- (12) "Licensed to search" shall mean a license to prospect or search for mines other than gold, or gold and silver.

3. Aliens as well as British subjects may enjoy the benefit of this Act by complying with its provisions and submitting thereto.

4. It is hereby declared to be the law that in all grants in which mines and minerals have been excepted and reserved to the Crown, such mining rights are property separate from the soil covering such mines and minerals, and constitute a property under the soil which is public property independent from that of the soil which is above it.

In *McMahon v. Berton*, (1851) 2 Allen, 321, the Supreme Court of N. B. in a judgment of Carter, C.J., for the Court, decided

Page 353, "We entertain no doubt that the King being in 1786 seized of the land with all the mines, metals and minerals therein, might lawfully reserve to himself and his successors, and except out of the grant of the soil, any base mines, metals and minerals, as well as the royal metals, gold and silver; and we think that coal mines were excepted out of the grant in question (a tract of land with the appurtenances and hereditaments thereto belonging, and mines and minerals: saving and reserving all mines of gold, silver, copper, lead and coals), and remained the property of the Sovereign."

Page 357, "It appears to us therefore that where the Crown or a subject being originally seized of land and the minerals beneath, grants the land, reserving the minerals, but without any express reservation of a right to enter on the land and dig mines and carry away the minerals, such reservation will not as a legal incident thereto give any right to do anything on the land previously granted, which will injure or destroy the surface of the land; that even if a bare right of entry could be held as an incident and necessary easement, no right to turn up or destroy any part of the surface by digging or otherwise could be so incident, without the consent of the owner of the land, or making him reasonable compensation for the loss and injury sustained by him thereby."

The Imperial Statute, 21 Jac. I. c. 14, is in force in New Brunswick, consequently a grant of land, of which the Crown has been out of possession for 20 years prior to the issue of the patent, is invalid, unless the title of the Crown is first established by information of intrusion: *Murray v. Duff*, (1895) 33 N. B. R. 351.

5. All veins or deposits of coal, on granted lands, known as surface veins, and not exceeding two feet in depth,¹ are excepted from the operations of this Act. They may be mined and worked, and said coal removed, shipped and disposed of without the payment of any royalty whatever.

¹ By 56 Vict. c. 10, s. 2, the word "thickness" was struck out, and the word "depth" inserted instead.

6. The administration of this Act shall devolve upon and be attached to the Department of Crown Lands, and the Surveyor-General shall be charged with the duty of carrying out and enforcing the provisions hereof.

6a. If the Lieutenant-Governor in Council shall deem it expedient, and in the interest of mineral development, and as tending to encourage the prospecting for minerals within the Province, he may authorize the Surveyor-General to purchase any suitable, proper, modern, improved machinery and appliances for exploration and boring purposes, and to expend a sum not exceeding four thousand dollars in procuring such appliances and machinery, the same to be paid for by warrant from the Receiver-General in the usual manner. Such machinery, when procured, shall be placed under the care, management and direction of a suitable person, experienced in the use of such machinery and the prosecuting of works in exploring for minerals, and may be allowed to be used by any persons, by arrangement with the Surveyor-General, upon his being reasonably satisfied that the locality in which the work of exploration and boring is proposed to be carried on, gives probable evidence of the existence of minerals therein, such arrangement for the use of the said machinery being upon such terms, and governed by such conditions as the Lieutenant-Governor may by Order in Council prescribe; any costs, charges and expenses of carrying out the arrangement herein mentioned on the part of the Surveyor-General, to be a charge against the revenue of the Province, and to be paid by warrant in the usual manner.¹

¹ 59 Vict. (1896) c. 27, s. 1 (passed 20th March, 1896).

7. Neither the Surveyor-General, Deputy Surveyor-General, nor any officer appointed under the authority of this Act, shall be directly or indirectly interested in any mine or mining operations, or in the proceeds or profits thereof, nor shall any of them act as agent or attorney of any person interested therein, under a penalty of one thousand dollars for each offence, to be recovered in the Supreme Court.

OF GOLD AND GOLD AND SILVER MINES.

8. The Governor in Council on being satisfied of the discovery of gold, or gold and silver, in any locality, may by proclamation in the Royal Gazette, declare such locality to be a gold district, and assign limits and boundaries to such district, and from time to time enlarge, contract or otherwise alter such limits.

9. Quartz mines shall, so far as local peculiarities or other circumstances may permit, be laid off in rectangular areas of one hundred and fifty feet magnetic east and west, and two hundred and fifty feet north and south. These areas shall be known and described as "class number one."

10. Areas shall be laid out as far as possible uniformly and in quadrilateral and rectangular shapes. Measurements of areas shall be horizontal, and each area shall be bounded by land vertical with the horizon.

11. Alluvial mines shall be laid out as far as local peculiarities will allow, as directed in the case of quartz mines. The course of the respective boundary lines of such mines to be decided by the Surveyor-General or officer appointed by him, and advance payment or rents and royalties shall be the same as those of quartz mines.

12. There shall be kept at the Department of Crown Lands a book of record for proclaimed gold districts and for unproclaimed districts or places in which applications for leases of areas are made, and another for prospecting licenses, wherein shall be entered all applications for areas, with the precise times of their being made, showing the descriptions of the areas applied for, the amounts paid and the names of the applicants in full, the names of the licensed mill owners, and the amounts of royalty received from them, and from others. Such book of record shall be open at all reasonable times to the inspection of all persons desiring to see the same.

13. The Surveyor-General shall cause to be prepared, and shall keep in his Department, plans of all gold districts with the areas entered thereon, and on which all areas applied for shall be distinctly designated by numbers.

14. All applications for leases of areas shall be made to the Surveyor-General, but no application shall be received for areas already applied for, or under license or lease.

15. Every application shall be in writing, defining the area or areas applied for, and shall be accompanied by a payment of two dollars for each and every of such areas, which shall be considered to be the annual payment in advance for the first year that the lease is outstanding, and the Surveyor-General receiving such application shall endorse thereon the precise time of such receipt.

(1) Whenever any area shall have been leased as herein provided, the owner thereof shall, on or before the expiration of the

first year that the lease is outstanding, pay in advance to the Surveyor-General the sum of fifty cents for each and every such area or portion thereof contained in his lease, and shall thereafter continue to make the same payments annually in advance, and in the same manner for the remaining years for which the lease shall continue. Upon failure in the payment of such sum in advance, the lease will become, and is hereby declared to be forfeited at the expiration of the then current twelve months in which default was made, the first payment in advance being considered the annual payment for the first twelve months; and applications for licenses or leases in respect of the areas hereby declared forfeited, may be made at the office of the Department on the day after such twelve months shall expire.

16. Every lease granted under this Act shall be executed on the part of the Crown by the Surveyor-General under his hand and seal, and on the part of the lessee under his hand and seal or that of his duly authorized attorney or agent, and when such lease is executed by such attorney or agent, the instrument conferring such power shall be filed in the office of the Department before such execution takes place, and such lease shall be in the form in the Schedule (A) hereto annexed, and such lessee, his executors, administrators or assigns, where such lease is granted on private lands, shall, before making entry on such lands, obtain from the owner thereof permission to enter, either by agreement with such owner or otherwise in accordance with the provisions of this Act.

17. When the holder of a lease of areas on private lands cannot make an agreement with the owner thereof, and with the tenant, where a tenant is occupying, for leave to enter and for easements and for any damage which may be done such lands, and for other purposes mentioned in the 19th section of this Act, it shall be lawful for such holder to give notice to the owner and tenant to appoint an arbitrator to act with another arbitrator named by the lessee of areas in order to award the amount of damages to which the owner and tenant shall be entitled by reason of the opening and working of a mine in such lands, and the doing of the acts or things authorized and contemplated by this Act, and if any lessee shall enter and work upon land leased before he may have agreed with the owner and tenant of the land, or have proceeded to have his damages appraised in accordance with this Act, the owner and tenant may com-

plain to a Judge in the Supreme Court, who shall, in a summary way, investigate the complaint, and if the same is substantiated, shall declare the lease forfeited.

18. The notice mentioned in the last preceding section shall, when practicable, be personally served on such owner, or his agent and tenant, of such lands (if any), but if after reasonable efforts have been made to effect such personal service, such service cannot be effected, then such notice may be served by leaving it at the last known place of abode of the owner, or his agent and tenant. If the owner resides in the county in which the land is situate, such notice shall be served ten days before the expiration of the time limited therein, if out of the county and within the Province, twenty days, and if out of the Province, thirty days before such expiration. If the owner and tenant both refuse, omit or decline to appoint an arbitrator, or when for any other reason no arbitrator is appointed by the owner or tenant in the time limited therefor in the notice, the warden of the municipality wherein the lands lie shall, on being satisfied by affidavit that such notice has come to the knowledge of such owner, agent or tenant, or that such owner or agent or tenant wilfully evades service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, and that notice was left at the last known place of abode of such owner or agent or tenant, appoint an arbitrator on his behalf. One arbitrator only shall be appointed by the owner and tenant, and if they do not agree in the choice of an arbitrator, the one chosen by the owner shall be entitled to act.

19. All arbitrators appointed under the authority of this Act shall be sworn before a justice of the peace to the faithful discharge of the duties assigned them, and they shall forthwith proceed to estimate the reasonable damages which the owners and tenants of such lands, according to their several interests therein, shall respectively sustain by reason of the opening of necessary shafts and other excavations, the construction of roads and drains, the erection of necessary works and buildings thereon, and of the occupation of so much thereof (how much to be determined by an officer appointed by the Surveyor-General in the event of any dispute arising in respect thereof) as the lessee may require for all purposes connected with the opening and working of the mine to the most advantage thereof, including therein all such spaces as may be necessary from time to time for dumping ground or grounds for depositing the mineral mined as well as the refuse, rubbish, waste and other material mined

or excavated by such lessee. In estimating such damages the arbitrators shall determine the value of the land irrespective of any enhancement thereof from the existence of minerals therein. In case such arbitrators cannot agree, they may select a third arbitrator, and when the two arbitrators cannot agree upon a third arbitrator, the warden of the municipality in which the lands lie shall select such third arbitrator. The award of any two arbitrators made in writing shall be final.

20. When the owner of such lands shall be unknown or uncertain, the lessee shall, by advertisement published in the Royal Gazette and in a newspaper (if any) published in the county where the lands lie, for at least thirty days, and in which advertisement the lands shall be particularly described, call upon all persons having a right to such damages to appear before the warden of the municipality in which such lands lie, on or before a certain day therein named, to be not less than thirty days after the publication of such advertisement, to appoint an arbitrator, and if an arbitrator is not so appointed on or before such day, the warden and lessee shall each appoint an arbitrator, and all further proceedings shall be in accordance with the provisions of this Act, and the warden shall receive all moneys awarded in such case, and pay the same over to the treasurer of the municipality, and when the right to ownership of the land shall be in dispute the payment for damages awarded shall in like manner be made by them to the warden, who shall pay the same to the treasurer of the municipality.

21. Payment of such damages by the party liable therefor to the person designated by the award as entitled thereto, or if the award shall not designate the persons entitled, to such persons as in the absence of any dispute, shall be ostensibly entitled thereto, shall exonerate the party making payment, but any person subsequently claiming to have been entitled to the damages so paid, may prosecute his claim by action for money had and received against persons to whom payment shall have been made. In case the award shall not designate to whom the money is to be paid, or in case the party designated shall decline to receive it, the party liable to the payment of the amount so ordered may exonerate himself from all further liability by paying the money so ordered to the Clerk of the Pleas of the Supreme Court. The Clerk of the Pleas, upon receipt thereof, shall deposit the same, less a commission of two and a half per cent. thereon, at interest in the Government Savings Bank or in a chartered bank. Such Clerk of the Pleas shall not be entitled, under any circumstances, to make any charge beyond the said commission.

22. In case of dispute or unknown title, a Judge of the Supreme Court, on application of claimant, may order the damages paid to the treasurer of the municipality or Clerk of the Pleas to be paid to the persons who shall establish their right thereto to the satisfaction of such Judge, but no order shall be made until sufficient notice has been given in the judgment of the Judge to protect the rights of all persons who may be, or who may claim to be interested.

23. The lessee or licensee shall not be implicated, nor shall he be made a party in any contestation between the parties, respecting such right to such damages.

24. In no case in which the award shall find the amount of damages with sufficient certainty, shall such award be set aside because persons entitled to damages are not designated by name or otherwise sufficiently designated, or by reason of error or irregularity as to the persons entitled, or on account of any matter of form, but the Supreme Court, or any Judge thereof, may rectify any error or informality, and may adopt such proceedings as may be deemed advisable for determining to whom the damages may be paid, or for otherwise carrying into effect the provisions and intent of this Act.

25. The payment of all damages awarded in accordance with the preceding sections shall be made by the lessee or licensee before entry on the lands included in his lease or license, in the manner hereinbefore provided.

26. All persons obtaining licenses and leases under this Act, and those deriving title under them, shall be answerable for all damages that may ensue from the falling in of lands, or for other injury which may have been sustained by the owners, or tenants of such lands for which damages have not been awarded, by reason of the work of the parties obtaining licenses or leases or those under them, or deriving title from or through them. Where an agreement cannot be made with the owner and tenant (if any) of the lands for any such subsequent damages, the holder of the lease may proceed to have them referred to arbitration in the manner hereinbefore provided for, and relating to the assessment of damages before entry.

27. All leases shall be for the term of twenty years, but the holder of any such lease may at any time surrender the same by notice in writing, signed by him, and filed, together with his counterpart of the lease, in the office of the Surveyor-General. In case the counterpart of the lease has been lost or cannot be obtained, an affi-

davit to that effect made by the lessee shall be received in place of such counterpart, but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease or in respect of any act, matter or thing for which at the time of such surrender he was liable under the terms of such lease.

28. Such leases may be forfeited on failure to pay the stipulated royalties other than those arising from gold or gold and silver-bearing material, crushed or otherwise treated at the licensed mill, or to keep employed annually on the demised premises the number of days' labor hereinafter specified, or to comply with any other of the provisions and stipulations in the leases contained.

29. The holder of any such mining lease shall not use any part of the lands so demised for any other purpose whatsoever, except such as shall be necessary for making roads, opening drains, erecting necessary works, buildings and all other purposes connected with the opening and working of such mines to the most advantage, and all necessary ways and water-courses, whether expressly reserved in such leases or not, shall be considered as reserved to the Crown, and in respect to the making, alteration and use thereof, shall be subject to such orders and regulations as the Governor in Council may from time to time consider expedient; and all licensees and lessees and other persons employed about the mines on such demised premises shall use the lands in such manner as will be least injurious to the owners and occupants of such lands, or any other lands lying contiguous thereto.

30. The Governor in Council may by order and regulation, prescribe the number of days' labor which any lessee shall be required to perform in respect of the areas which may be included in his lease, and may fix and determine the conditions of such labor, and the evidence, whether by affidavit or otherwise, the lessee shall be required to furnish of the compliance on his part with such conditions, and may determine and prescribe the circumstances under which compliance with these conditions may be dispensed with.

31. When, from any cause whatever, a leased mine shall become forfeited to the Crown, under the proceedings herein provided, all the right, title and interest which the holder of such forfeited lease had therein previous to such forfeiture, shall become thereby vested in the Crown, and the lessee of any mine may, during his lawful occupancy thereof, take down and remove any house, buildings, machines, or other erections built or placed by him thereon, notwith-

standing that the same may be considered in law as attached to the freehold.

32. Any person occupying and staking off any areas,¹ or taking possession of by staking off any areas from the lands not lying within any proclaimed gold district, not exceeding one hundred areas of Class No. 1, shall be entitled to a license or lease, as the case may be, in preference to any other applicant; every such person shall be entitled to one week, and thereafter to twenty-four hours' time for every fifteen miles distance of the mine so staked off from the office of the Surveyor-General at Fredericton, for making his application.

¹ By 56 Vict. (1893) c. 10, s. 4, the word "acres" was struck out, and the word "areas" inserted instead.

33. The Surveyor-General may issue licenses to search for gold and silver, to be called prospecting licenses, which shall be subject to the rules prescribed by this Act, or by the Governor in Council under the authority of this Act.

34. Any such license may, in the discretion of the Lieutenant-Governor in Council, include an area not exceeding one hundred areas of Class No. 1 in extent, or less than ten areas, so as the same may be laid off in quadrilateral and rectangular figures, and shall not, in length, exceed double the breadth thereof. Any applicant may apply for one or more of such licenses.¹

¹ Inserted by 56 Vict. (1893) c. 10, which repealed s. 34 of the principal Act.

35. Such license shall be in force for any period not exceeding twelve months from the date of application therefor in the discretion of the Surveyor-General.

36. All applications for prospecting shall accurately define by metes and bounds the lands applied for, and shall be accompanied by a payment at the rate of fifty cents per area for every area up to ten areas in extent, and of twenty-five cents for every area in addition to that extent.

37. Before such license shall be issued the applicant shall enter into a bond with two sureties to the satisfaction of the Surveyor-General to recompense the proprietor of the soil, in the event of entry being made on private lands, for damages done to his lands, to make the returns at the expiration of the license, and of the renewal, and to pay the royalties hereinafter required.

38. If the proprietor of private lands so entered upon shall seek damages, he shall, before the end of three months after the expira-

tion of the license, make his claim in writing against the holder of such license, declaring the particulars and amount of claim, and if the claim is not adjusted by agreement between the parties within one month after notice thereof, as aforesaid, it may be settled by arbitration in accordance with the provisions of section 17 and subsequent sections of this Act, but in such case either of the parties may give the required notice to appoint an arbitrator, and the warden of a municipality may appoint an arbitrator on behalf of either of such parties neglecting or refusing to make such appointment.

39. The holder of a prospecting license, who shall have fulfilled all the terms and conditions thereof, shall be entitled to a renewal thereof for a second period of not exceeding twelve months, upon like terms and conditions, except that the price of the same space shall only be half that paid on the previous application.

40. Within the period for which license or renewed license is granted the party holding the same shall be entitled to select any area or areas comprised therein, of size and form described in this Act, and shall be entitled to a lease of areas selected, upon the terms imposed herein.

41. No lease nor any prospecting license or license to search shall authorize entry upon any buildings or the curtilage appertaining to any house, store, barn or building, or upon any garden, orchard, or ground reserved for ornament or under cultivation for growing crops or enclosed, except with the consent of the occupier or by license of the Governor in Council authorizing such entry to be granted on special application setting forth the circumstances under which the same is applied for, and on such terms as the case may require.

42. On all leases of gold and silver mines, or prospecting licenses to search for gold or silver, there shall be reserved a royalty of two and one-half per cent. upon the gross amount of gold and silver mined.

42a. The Lieutenant-Governor in Council may by order in Council, whenever it shall be deemed necessary to assure speedy development provide that the royalty reserved under "The General Mining Act," shall not be imposed or collected upon any ores mined, wrought or taken, until after ten years from the date of the mining lease.

43. The Surveyor-General may issue a license to any person or persons (to be called "licensed mill owners") to run or use any mill

or machinery (to be called a "licensed mill"), for the purpose of the reduction or concentration of quartz or other gold or silver bearing material, or the obtaining of the gold and silver therefrom by crushing, stamping, amalgamating, or otherwise, and to retain out of such gold and silver a sufficient amount to pay the royalties prescribed by this Act, and no person or persons shall run or use such mill or machinery without such license therefor first had and obtained, except in the case of mills or machinery worked by hand.

44. Before any such license shall be granted, the party applying therefor shall enter into a bond to Her Majesty in the penalty of two thousand dollars, to comply with the requirements of this Act in respect of licensed mill owners.

45. Every licensed mill owner shall keep on the demised premises a book or books of account, to be supplied by the Surveyor-General, which shall at all times be open to the inspection and examination of the Surveyor-General or deputy, or any other person thereto authorized by the Surveyor-General, in which book or books shall be entered a clear and distinct statement of all quartz or other material reduced, concentrated, crushed, stamped or amalgamated at such licensed mill, and the following particulars in respect of the same:—

- I. The name of the owner or owners of each distinct parcel or lot of quartz or other material crushed.
- II. The weight of each such parcel or lot.
- III. The date of crushing the same.
- IV. The actual yield in weight of gold, or gold and silver, from each parcel or lot.
- V. The royalty thereon, calculated at two and one-half per cent.
- VI. The number of the lease of the mine or area (so far as the same is known or can be ascertained), from which each such parcel or lot was raised.

And if he fail to keep such book or books of account, his license may be revoked.

46. Each licensed mill owner shall pay, or cause to be paid, in money in weekly or other payments, as the Surveyor-General shall order, to the Surveyor-General or his deputy, a royalty of two and one-half per cent. on the gross amount of gold obtained by amalgamation or otherwise in the mill of such licensed mill owner,

at the rate of nineteen dollars an ounce troy for smelted gold, and eighteen dollars an ounce troy for unsmelted gold, and of two and one-half per cent. on the silver at the rate of one dollar per ounce troy.

47. In case any licensed mill owner shall fail to pay such royalty in the mode or at the times prescribed by or in accordance with this Act, he shall be liable to an action at the suit of the Surveyor-General for money had and received to the use of such Surveyor-General, and such action may be brought according to the amount of the claim, in the same Court which would have jurisdiction in case the amount claimed were an ordinary private debt, and his license may be revoked.

48. Every licensed mill owner shall file in the office of the Surveyor-General on or before the tenth day of each month, a return, being a copy of the entries in such book or books of account, for the last preceding month as prescribed by the 45th section, which return shall be verified by the affidavit of the person principally employed in keeping such account; and on failure to make such return, or to verify the same as aforesaid, the license of any mill owner may be revoked.

49. Any owner or part owner of any mill or machinery for the crushing or reduction of quartz, or for the obtaining of gold or gold and silver therefrom (other than mills or machinery worked by hand), which shall be engaged, used or employed for the crushing or reduction of quartz or other gold or gold and silver bearing material, or the obtaining of gold or gold and silver therefrom, without a license therefor first had and obtained, as prescribed by this Act; and any person engaged as agent, servant, workman, clerk or otherwise in any such mill, shall forfeit and pay the sum of four hundred dollars for each such offence; and for every day in which such offence shall be committed, the same shall be considered a new offence.

50. When the account books prescribed by this Act, or any of the accounts hereby required shall be fraudulently or falsely kept, or the affidavits hereby prescribed, or any of them, shall be false or fraudulent, the license to the mill in respect of which the offence has been committed may be revoked and the "licensed mill owner" shall be liable for each offence to a penalty of not more than two thousand dollars, to be recovered in the Supreme Court in the name of the Surveyor-General.

51. In case a "licensed mill owner" is not the owner of the mill or machinery so licensed, the owner thereof may apply to the Surveyor-General to have said license revoked, and upon proof having first been given that the "licensed mill owner" has received reasonable notice that such application would be made, with the date thereof, and that the applicant is the legal owner of said mill and machinery, said license may be revoked.

52. The Surveyor-General shall have authority to enquire into any alleged violation of the sections whereby such mill license may be revoked, and if in his judgment such violation has been committed, he may revoke the same, but his judgment shall be subject on appeal to the revision of a Judge of the Supreme Court at Chambers who shall make such order in respect to the same as shall be agreeable to law and justice, and if he think fit, may order any question of fact to be tried by a jury.

53. Every licensed mill owner, who shall in all respects, have complied with this Act, shall be entitled to receive from the Surveyor-General at the end or expiration of every three months from the date of his license, a sum equal to five per cent. upon the amount paid over by him as royalty during such period.¹

¹ By 56 Vict. (1893) c. 10, s. 6, the words "but no such percentage shall be paid in the case of free leases" were struck out.

54. A licensed mill owner may at any time surrender his license by delivering the same into the office of the Surveyor-General with a written surrender endorsed thereon; but no such surrender shall take effect till after the lapse of ten days from the filing at the office of the Surveyor-General of a notice in writing of the intention of such mill owner to surrender the same.

55. Upon such surrender taking effect as aforesaid, such mill shall cease to be a "licensed mill" until again licensed under the provisions of this Act.

56. The licensed mill owner so surrendering his license, and his sureties, shall remain liable under their bond for all obligations accruing thereunder up to the time when the surrender takes effect as aforesaid, but shall not be liable for obligations accruing thereafter.

REQUIREMENTS OF LESSEES AND LICENSEES.

57. Lessees of mines shall be bound to make to the Crown Land Office within ten days after the first days of January, April, July and October in each year, true and correct returns to the best of

their knowledge and belief, on forms to be supplied by the department, in which shall be comprised the following particulars:—

- I. The number of days' labor performed on the demised premises during the preceding quarter;
- II. The number of tons of quartz or other gold or gold and silver bearing material raised from the demised premises during the preceding quarter;
- III. The person or persons to whom the same has been sold or disposed of, and the different lots or parcels in which the same has been sold or disposed of, with the dates;
- IV. The weight of all quartz or other gold or gold and silver-bearing material, sent by him during the quarter to any licensed mill, and the name and description of the mill to which the same has been sent; and when the same has been sent, and kept in distinct parcels, the weight of each separate parcel;
- V. The yield of each separate parcel or lot, as returned and allotted by the mill owner, with the date of allotment;
- VI. The total quantity of gold or silver obtained from the mine in any manner during the quarter, distinguishing that resulting from the quartz or other gold or gold and silver-bearing material crushed at licensed mills, from the gold or gold and silver otherwise obtained, and such returns shall be verified on oath.

58. The lessee and licensee of each mine shall be liable for royalty upon all gold or gold and silver obtained from his mine in any other way than from quartz or other gold or gold and silver-bearing material crushed by licensed mills, but he shall be exempt from any claim in respect of gold or gold and silver obtained from quartz or other gold or gold and silver bearing material so crushed, the liability of the mill owner for such royalty being substituted for that of the lessee.

59.¹ This section was repealed by 56 Vict. (1893), c. 10, s. 7. It read as follows :

"When any parcel or quartz or other gold or gold and silver bearing material from a free mine shall have been crushed at a licensed mill, the owner of the quartz or other gold or gold and silver bearing material, on proof of the facts to the satisfaction of the Surveyor-General, shall be entitled to receive from the Surveyor-General the amount deducted by the licensed mill owner and paid as royalty under the provisions of this Act."

60. In case any holder of a lease granted under this Act shall fail to make payment of any royalty accruing under the terms of section 58, within ten days after the time prescribed by this Act for making his return to the Surveyor-General, he shall be liable to an action at the suit of the Surveyor-General, as for money had and received to his use for the value of the royalty so accruing.

61. Such action may be brought according to the amount claimed, before the same Court which would have jurisdiction in case the amount claimed were an ordinary private debt; and on a change in the office of the Surveyor-General, actions prosecuted by him shall be continued and prosecuted by his successor in such manner as the Court shall direct, and the Surveyor-General may prosecute in his own name as for money had and received to his use, although the same shall have become due to a previous Surveyor-General.

62. In any case of liability to forfeiture of any gold, or gold and silver mining leases, for non-compliance by the lessee with the terms, stipulations and conditions therein contained, or by this Act required, the Surveyor-General shall cause a notice in the form in Schedule (E) to be personally served upon the lessee (or some or one of the lessees, where more than one are included in the lease), or his agent or person principally employed on the premises, or shall cause such notice to be posted upon the premises leased, where no person can be found in the gold district where such premises lie, or (in case the leased premises are not within a proclaimed gold district), in the parish, or in one of the parishes in which such premises are situated, upon whom to make service thereof, informing him of such charge, and appointing a time (not less than thirty days after the service or posting of such notice) and place for the investigation of the same; and a duplicate of such notice shall also be posted up in the office of the Crown Land Department at least thirty days next previous to the time so appointed; and such duplicate shall be kept so posted for at least thirty days after the investigation and decision of the case, with the decision and the date of such decision briefly noted thereon.

63. At the time and place appointed, the Surveyor-General shall proceed to investigate such case, and the service or posting of the notice shall be proved, either orally at the investigation or by affidavit. Upon proof of such notice, and upon hearing the evidence relating to the case, which shall be taken in writing and signed by the witness, the Surveyor-General, on being satisfied of the non-ful-

filment of the conditions of the lease or of the provisions of this Act, shall give judgment forfeiting the lease and revesting the premises in the Crown; and such judgment shall be in the form of Schedule (F) and shall be signed by the Surveyor-General.

64. From the judgment of the Surveyor-General, the party interested may appeal to a Judge of the Supreme Court at Chambers, provided that notice of such appeal be given to the Surveyor-General within thirty days from the date of his decision; provided also, that the party appealing shall on applying for such appeal make and file with the Surveyor-General an affidavit that he is dissatisfied with such judgment, and that he verily believes the lease has not been forfeited and that the conditions in respect of which the forfeiture has been declared have really and truly been performed and fulfilled, and shall within the time limited for appeal enter into a bond with two sufficient sureties in the penalty of fifty dollars, to enter and prosecute his appeal according to the provisions thereof, and pay all costs which may be adjudged against him by the Court of Appeal.

65. On such appeal being perfected, the Surveyor-General shall transmit to the Clerk of the Pleas at Fredericton the notes of testimony taken before him, and the Judge at Chambers shall confirm or set aside the judgment or make such order thereon as is agreeable to justice and in conformity with law.

66. If the Judge shall consider that the case involves questions of controverted fact on which he is of opinion that the verdict of a jury should pass, he may make an order for the trial of the questions of fact in the county where the land lies, in which case all the papers shall be transmitted to the Clerk of the Circuits of that county; and the cause shall come on for trial in its place in the same way as ordinary appeals ordered to be tried by a jury.

67. Upon the finding of a jury on the fact, the Judge shall pronounce judgment on the whole case. So soon as judgment declaring forfeiture of the lease shall be given either by the Surveyor-General without appeal, or by the Court of Appeal when the Surveyor-General's judgment is appealed from, the lessee, and all persons holding under him, shall thereafter cease to have any interest in the mine leased, and a minute of the judgment declaring forfeiture shall be registered in the Crown Land Office on the expiration of the time limited for appeal, in the same manner as prescribed by this Act for leases and transfers; and the leased premises shall then be open to be leased to any other applicant in the same way as if no lease thereof

had ever passed; and pending the proceedings between the delivery of the first judgment and any subsequent judgment upon appeal therefrom, such lessees shall suspend all mining operations on the area alleged to be forfeited; otherwise he may, at the discretion of the Surveyor-General, be liable to be treated as a trespasser as herein-after directed.

68. The Surveyor-General shall have power to declare forfeited all leases granted for mining gold or gold and silver that are liable to forfeiture that have not been worked or have only been colorably worked for the space of five years next preceding, notice of such intended declaration first having been advertised for three weeks in the Royal Gazette, and in a newspaper, if any there be, in the county in which the areas contained in such lease or leases lie, said advertisement to show the names of the lessces, the number of the leases, and the date at which such declaration will be made. On the day so named in such notice the Surveyor-General shall hear any party interested in any such lease, and his judgment shall be final, unless appealed from within thirty days thereafter, such appeal to be made and perfected as provided in section 64 of this Act.

69. No applications for leases or prospecting licenses for forfeited areas shall be received until the time limited for appeal has expired, and all appeals are finally determined.

70. Whenever any areas which are or shall be under lease for gold mining or for gold and silver mining shall be forfeited under the provisions of this Act, and whenever after the investigation by the Surveyor-General, he is unable to decide who was the first applicant for a lease of said areas, the said Surveyor-General may, after public notice to be given in such manner and for such length of time as may seem to him to be proper, cause the right to the lease of the said areas to be sold at auction, in whole or in part, as he shall deem best for the public interest, and the person or persons who shall offer and pay the highest premium therefor at such sale shall be entitled to receive from the Surveyor-General a lease or leases of such area or areas as he or they may have purchased as aforesaid, in preference to any other applicant or applicants.

UNLAWFUL ENTRY AND WORKING.

71. The Surveyor-General shall have power by warrant under his hand and seal, addressed to the sheriff or a constable of the county wherein the gold district lies, to cause any person unlawfully

in possession of a mine so judged to be forfeited, to be removed from the possession and occupation thereof, and upon receipt of such warrant, the sheriff or constable to whom it is directed shall immediately execute the same.

72. Any person found mining in any land belonging to the Crown or to a private proprietor, the minerals in which belong to the Crown, or entering thereon for the purpose of mining, shall be liable to a penalty for each offence of not less than ten dollars nor more than fifty dollars; but this section shall not extend to parties prospecting or searching for mines.

73. Parties violating the provisions of the preceding section, shall be considered guilty of a distinct offence for every day they shall unlawfully mine.

74. On complaint in writing made to any justice of the peace of the county in respect of such unlawful mining or entry to mine, the justice shall issue his warrant to apprehend the offender and bring him before the justice to answer the complaint, such justice shall thereupon forthwith enter upon the investigation of the complaint; and in case he shall find the party guilty, impose such fines or penalties as the party may have incurred under the provisions of this Act. In case the defendant requires time for the production of witnesses for the defence, the justice shall adjourn the investigation for any period not exceeding six days, on being satisfied by affidavit that such time is required for that purpose; and in such case the defendant shall be committed to jail, unless he gives security to the satisfaction of the justice to appear at the time and place appointed for such adjourned investigation.

75. The decision of such justice shall be subject to appeal, as in ordinary cases; but before such shall be allowed, the appellant shall give a bond, with sufficient sureties, to the satisfaction of the clerk of the peace of the county where the lands lie in double the amount of the penalty and costs, to appear in the Supreme or County Court and obey the judgment thereof, and pay such costs as the Court may award.

76. Gold or gold and silver in quartz or otherwise, unlawfully mined on the property of any lessee of the Crown, shall be considered in law the personal property of the owner of the mine and a search warrant may be issued for the same by any justice of the peace for the county, in the same manner as for stolen goods; and upon the

recovery of any gold or gold and silver under such warrant, the justice shall make such order for the restoration thereof to the proper owner as he shall consider right.

77. Nothing in this Act contained shall prevent Her Majesty from having or using any other remedy now available to recover possession of any mine forfeited from causes cognizable before the Surveyor-General, or from any other causes from which the same may be liable to forfeiture.

78. Any party aggrieved by a decision of the Surveyor-General respecting any application for a prospecting license or a lease of a gold area or a gold and silver area, or a license to search, or a license to work, of any area other than a gold or gold and silver area, may appeal from such decision to the Supreme Court at the next term or the following term by leave of the Court.

79. Any party desiring to appeal from such decision shall give notice in writing to the Surveyor-General of his intention to appeal within twenty days after such decision or within twenty days after such decision being made known to the party dissatisfied therewith, but always within one year from the date of such decision; and shall make and file with such notice an affidavit that he is dissatisfied with such judgment or decision, and that he verily believes he is entitled to the license or lease applied for, and shall also set forth therein the grounds of his appeal, and shall within ten days thereafter enter into a bond with two sureties in the penalty of two hundred dollars to enter and prosecute his appeal according to the provisions of this Act, and pay all costs which may be adjudged against him by the Court of Appeal; and thereupon the Surveyor-General shall file such notice and affidavit, together with all papers and documents connected with such appeal with the Clerk of the Pleas at Fredericton, on or before the first day of such term.

80. The provisions of the foregoing sections from 9 to 79, both included, shall apply exclusively to gold and to gold and silver mining, except where any such sections are expressly mentioned to apply to mines other than gold and gold and silver mines by the subsequent sections of this Act.

OF MINES OTHER THAN GOLD MINES.

LICENSES TO SEARCH AND WORK.

81. The Surveyor-General may upon application grant licenses to search, to be in force for one year and six months¹ from the date of application therefor, to enter upon any lands in this Province not already applied for or under license or lease for mining purposes, and to dig and explore for such minerals other than gold or silver as the Crown holds for the benefit of the Province, a bond being first given to the Surveyor-General with sufficient sureties to his satisfaction that in the event of entry being made upon private lands, recompense shall be made for damages in the manner hereinafter provided.

¹ Inserted by 56 Vict. (1893) c. 10, s. 8.

82. No such application shall be valid unless accompanied by a payment of twenty dollars, and the license to search may cover any single tract of ground not exceeding five square miles in extent, but not more than two and a half miles in length in a rectangular shape, the lines running magnetic east and west and north and south.¹

¹ Added by 56 Vict. (1893) c. 10, s. 9.

83. Upon such application and payment being made, the Surveyor-General, where necessary, shall cause the lands applied for to be surveyed and laid off, and a full description thereof shall be embodied in the license to search, but no such license shall authorize entry upon any lands which in accordance with section 41 of this Act are forbidden to be entered upon except as in that section excepted.

84. The cost of such survey shall be defrayed by the licensees or lessees, and the search for minerals under such licenses shall be made free of all expense to the Government; and the holder of the license shall, within the time that the same shall be in force, and with all convenient speed, make a full and correct report of the results of his exploration to the Surveyor-General.

85.¹ This section was repealed by 56 Vict. (1893), c. 10, s. 7, it read as follows :

¹ "The said license to search may be renewed for a further period of twelve months, on application therefor to the Surveyor-General, setting forth the special circumstances of the case, not less than thirty days before the expiration thereof, and on payment of the further sum of twenty dollars; subject, however, to the approval of the Governor in Council, upon consideration of the special circumstances submitted."

86. When a license to search for mines, other than gold and silver, has been applied for, it shall be lawful for the Surveyor-General to receive applications for other licenses to search (called second rights) over the same area; provided that he shall receive no more applications than there are areas of one square mile each contained within the area so first applied for, and on the expiration of the license to search granted under the first application, or on the selection of the one square mile thereunder, the license to search can be granted under the second application, and so on, until the whole area is disposed of.

87. If the proprietor of private lands entered under such license shall seek damages, the proceedings for ascertaining the amount of such damages and making payment of the same, shall be the same as provided for by this Act in the case of prospecting licenses for gold.

88. The holder of a license to search may at any time before the expiration thereof, select from the land covered by such license, an area of one square mile for the purpose of working the mines and minerals therein, and may make an application in writing to the Surveyor-General for a license to work the same, which application shall be accompanied by a payment of fifty dollars.

A Crown grant excepted and reserved, among other things, "all coals, and all gold and silver and other mines and minerals," and it was held, without deciding whether the substance in question was coal or bitumen, that it was nevertheless a mineral and excepted. "All we are called on to decide is whether carbonaceous minerals are excepted, we think they are": *Gesner v. Cairns*, (1853) 2 Allen, 593.

The construction of a Crown grant cannot be limited by the Royal instructions directing the Governor of the Province to reserve to the Crown certain minerals (*Ib.*).

If the exception is larger than the instructions authorized, it may be a ground for repealing the grant, or the grantee may refuse to receive it; but the Crown may ratify the act of the Governor (*Ib.*).

A license from the Crown to dig minerals in granted lands, where the mines are excepted out of the grant, will not justify an injury to the surface soil (*Ib.*).

A paid license from the owner of land in which the mines are excepted, to the grantee of the mines to enter and dig them, vests no estate in the licensee, and is revoked by a conveyance of the land to a third person" (*Ib.*). See also *Gesner v. The Gas Co.*, (1853) 1 James (N. S. R.) 72.

89. Upon such application and payment being made, the Surveyor-General shall cause the portion so selected to be surveyed and laid off, and the applicant shall defray the expenese of such survey,

which said portion shall be in one block, the length of which shall not exceed two and a half miles, and as far as possible in a rectangular block, the lines running by the magnet north and south and east and west ;¹ and the person making such survey shall make a full and accurate plan thereof, and transmit the same to the Surveyor-General.

90. All the provisions herein contained relative to settlement by agreement or arbitration with the owner of the soil, where the same is private land, for damages done to his land, and to payment therefor as set forth in sections 17 to 25 inclusive, and to the occupation of such lands as set forth in section 29, and to the exemption of certain descriptions thereof from liability to be entered as specified in section 41, and to the vesting of interests forfeited under this Act as specified in section 31, shall be applicable and in force in the case of mines other than gold or gold and silver mines, equally as in gold or gold and silver mines.

91. Upon complying with the requirements of this Act, the applicant shall be entitled to a license to work the one square mile applied for; the bond given for the license to search, under which the license to work was obtained, remaining in full force and virtue.

92. Every license to work shall be for a term of two years from the date of application, and shall be extended to three years upon the additional payment by the holder of the license of one-half of the amount originally paid for such license; and within such term the holder of the license shall commence effective and not colorable mining operations, and shall continue the same in good faith until the termination of such term; and in case the same person shall hold licenses to work over several adjoining areas, and shall have commenced effective mining operations on one of these areas, the Surveyor-General may if it be shown to his satisfaction that the area so opened is by reason of a deficiency of mineral or other natural cause insufficient for effective working, allow one of the adjoining areas to be combined with it, and the two so combined to be considered as one area with respect to the commencement and continuation of effective mining operations.

93. Any party may apply for a license to work without having previously obtained or applied for a license to search, and in such case his application shall embody a description of the area applied for, and upon complying with all the antecedent conditions herein-before set forth, except those which relate solely to licenses to search,

and a bond being given to the Surveyor-General as for a license to search, he shall be entitled to such license to work.

94. The holder of a license to work, or those representing him, having complied with the terms of the preceding section, shall on or before the termination of his license be entitled to a lease of the premises described therein, which lease shall contain all the ordinary provisions of mining leases, with such conditions as the Governor-in-Council may think necessary to ensure the effective and safe working of the mines on such premises.

LEASES.

95. No lease shall be issued unless it shall have been shown to the satisfaction of the Surveyor-General that the conditions relative to commencement and continuance of effective mining operations in the license to work have been fully complied with.

96. Leases of mines, other than gold mines, or gold and silver mines, granted under the provisions of this Act, shall be executed by the Surveyor-General and the lessee in the same manner as provided in section 16 of this Act for leases of gold mines.

- (a) Leases of mines, other than gold, or gold and silver mines, shall be for the term of twenty years, and shall contain all the conditions, provisions, provisos, and reservations usually contained in such leases, or that may be required for the safe and proper working of the mines, or that may be required by an order of the Governor in Council, or by this Act or any Act hereafter passed by the Legislature of this Province; and such leases may be renewed on the same terms and conditions as are hereafter provided, but such renewals shall not extend or be construed to extend to a period beyond eighty years from the date of the lease:
- (b) In the granting of leases hereafter, there shall be reserved as a barrier a space of ten yards in width, running all around the area leased, which barrier shall not be opened or mined, except by the consent of the owner of the adjoining area, or by the order of the Governor in Council; and in case of a mine in lands covered with water, the barrier or reservation as above, shall be twenty-five yards in width, and shall not be opened or mined, unless by the consent of the owner of the adjoining area, or by the order of the Governor in Council.

(c) A lessee of a coal mine granted under this Act or any Act passed by the Legislature of this Province, shall not at any time during the term of his lease, or any renewal thereof, assign, transfer, set over or otherwise part with the premises granted or any part thereof, for such term or any portion thereof, to any person whomsoever without the license, consent or approbation of the Governor in Council first had and obtained for the purpose, and signified under the hand and seal of the Surveyor-General:

(d) ¹ This sub-section, which was repealed by 56 Vict. c. 10, s. 12, read as follows:

¹ The ratification by the Governor in Council signified under the hand and seal of the Surveyor-General shall be equivalent in all cases to the license, consent and approbation of the Governor in Council first had and obtained for the purpose under sub-section (c), and any assignment or transfer which has been so ratified, or may hereafter be ratified, is and shall be of the same force and effect as if such license and consent and approbation had been given before such transfer."

(e) ¹ This sub-section, which was repealed by 56 Vict. c. 10, s. 12, read as follows:

¹ "Any lease may at any time be surrendered by the lessee in the same manner and upon terms similar to those hereinbefore prescribed for the surrender of a gold or gold and silver mining lease."

97. The Lieutenant-Governor in Council is hereby authorized and empowered under any special circumstances which may seem to him to make it expedient and in the public interest so to do, and upon the recommendation of the Surveyor-General, by special order in Council to authorize the issue of a mining lease for a term not exceeding twenty years, and renewable in accordance with the provisions of section 96 of "the General Mining Act" and upon such conditions as the Lieutenant-Governor in Council may think fit to any licensee under license to search or work, and for such area as may be fixed or prescribed in the order, and such lease may, notwithstanding anything contained in the said Act, or any Act in amendment thereof, comprise and include areas embraced in several separate licenses to search or work.¹

¹ Inserted by 56 Vict. c. 10, s. 12, which repealed s. 97 of the principal Act.

97a. The annual rent payable by lessees of mines other than gold and silver shall be fifty dollars per square mile.

98. All leases of copper and lead mines which have been or may be issued under this Act or any Act passed by the Legislature of this

Province, shall be held and construed to convey to the lessee or lessees therein named, and his or their assigns, all ores and metals held in composition, associated with or contained in the copper or lead ores therein conveyed, and the same shall be subject to the same royalties as are hereinafter provided for such ores and metals.

CORNER POSTS.

99. All lessees of mining areas other than gold or gold and silver mining areas shall within six months after the issuing of such leases, place or cause to be placed at each and every corner of the areas contained in their respective leases, a post or monument of stone or other durable material of such size, nature and character as the Surveyor-General may determine.

- (a) Each post or monument shall have distinguishing letters or a suitable inscription cut or marked thereon, designating the corner where placed; provided always, that in cases of areas, any corners of which are covered with water, or where the placing of such posts or monuments at such corners would cause private or public inconvenience, it shall be lawful and requisite for the lessees, with the consent of the Surveyor-General to place such posts or monuments on the land adjoining such corners, in such position as shall be approved by the Surveyor-General;
- (b) The area of each lease shall be defined as herein required, according to the priority of the granting of such lease, and the lessee of the area first leased shall give to the lessees of the adjoining areas, or their agents, a written notice that on a day named, to be not less than ten days after the service of such notice, a survey will be made for the purpose of establishing the boundaries of the area and placing the posts or monuments required by this Act. Such survey shall be made by a sworn surveyor, whose appointment shall be sanctioned by the Surveyor-General, and such surveyor shall make a return of such survey with an accurate plan thereof to the Surveyor-General;
- (c) If within forty days after such return has been made by the surveyor to the Surveyor-General, no complaint be made to the Surveyor-General that the boundary lines of the area as so defined are not in accordance with the lines as originally defined, the boundary lines of the area as so defined by the surveyor shall as between the lessees be held to be the true and correct boundary lines of the area;

- (d) If within the year above mentioned, from disagreement or otherwise, such boundary lines are not established and defined as required by this Act, the Surveyor-General may cause a survey to be made and the area to be defined as hereinbefore required, and the boundaries so established shall be held to be finally determined;
- (e) The expenses of all surveys and of the placing or erection of all such posts or monuments as required by this Act shall be paid by the lessees of the areas defined; and where such surveys are made and such posts or monuments are established by virtue of the next preceding section, such expenses may be sued for and recovered from the lessees in the name of the Surveyor-General as an ordinary debt of like amount;
- (f) Each monument or post, as often as it shall be destroyed or removed, shall be replaced by the lessee at his own expense within one month; and the proceedings therefor shall be the same as hereinbefore required for the original definition of the area;
- (g) Where the lessee is not the owner of the land included in the area leased, and on which the boundary posts or monuments are required to be placed, he shall be at liberty to set them up on such land, but shall pay the proprietor for the damage caused thereby;
- (h) If the proprietor and the lessee cannot agree on the amount of such damages, the lessee may call on any three disinterested justices of the peace for the county in which the area is, to appraise the same. The justices so called upon shall forthwith appraise such damages, and their award, or that of any two of them, shall be final;
- (i) Each of such justices of the peace shall be entitled to one dollar a day for the time actually and necessarily employed in making such appraisal, besides travelling fees at the rate of two cents per mile, to be computed from the residence of the justice to the place where the appraisal is made; such pay and travelling fees to be paid by the lessee;
- (j) Any lessee neglecting to set up such post or monument, or to renew or replace the same when removed or destroyed, as required by this Act, shall forfeit a sum not exceeding one hundred dollars for every such post or monument he shall neglect to set up or replace;

- (k) Any person wilfully destroying, defacing, injuring or removing any such post or monument, or attempting so to do, shall forfeit a sum not exceeding one hundred dollars for each offence;
- (l) Any penalty under this Act shall be recovered in the name of the Surveyor-General, before two justices of the peace for the county wherein the offence is committed, in the same manner as an ordinary debt.

QUARTERLY RETURNS.

100. On or before the 10th day of each of the months of January, April, July and October in each and every year, the owner, agent or manager of every mine (other than a gold or gold and silver mine) leased from the Crown, shall send to the Surveyor-General a correct return, specifying the quantity of coal, iron ore or other mineral wrought or gotten in such mine, the probable use and destination of the same, and the amount of royalty which has accrued upon such material extracted during the last previous quarter; and on or before the last days of January, April, July and October in each year, a correct return specifying the number of days' labour and the number of persons ordinarily employed in or about such mine below ground and above ground, and the different classes of the persons so employed, and the costs and description of all the shafts, quarries, slopes, levels, planes, works, machinery, tramways, and railways, sunk, driven, opened or constructed during the preceding quarter. Such return shall be sworn to by the agent or manager and by one or more credible persons principally employed in or about the working and management of such mine.

ROYALTIES.

101. All ores and minerals (other than gold or gold and silver) mined, wrought, or gotten under authority of licenses or leases granted under the provisions of this Act or of any Act heretofore passed by the Legislature of this Province, shall be subject to the following royalties to the Crown, for the use of the Province, that is to say:—

COAL.—(1) Ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mines, or used in the manufacture of coke or other form of manufactured fuel.

(2) The words "removed from the mines" in the preceding section shall not be held to be applied to coal used for domestic purposes by the workmen employed in and about each mine; nor to coal used in mining operations in and about the mine from which such coal has been gotten; but coal so used shall not be liable to pay royalty.

(3) Nothing in this Act shall compel lessees of coal mines in this Province to pay royalties on coal other than on the terms prescribed in the leases now outstanding until said leases expire; but any such lessee may take advantage of the provisions of this Act, and from the date of its passage, if so disposed.

COPPER.—Four cents upon every unit, that is, upon every one per cent. of copper contained in each and every ton of two thousand three hundred and fifty two pounds of copper ore sold or smelted.

LEAD.—Two cents upon every unit, that is, upon every one per cent. of lead contained in each and every ton of two thousand two hundred and forty pounds of lead ore sold or smelted.

IRON.—Five cents on every ton of two thousand two hundred and forty pounds of ore sold or smelted.

TIN AND PRECIOUS STONES.—Five per cent. on their value.

SALT.—Two cents per bushel, but no royalty shall be paid where the brine does not contain at least fifteen per cent. of salt in solution.

(4) All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished or otherwise changed by the Legislature.

(5) From and after the passing of this Act, all royalties due to the Province shall bear interest at the rate of five per cent. per annum.

(6) "All other ore shall be subject to such royalty as shall be from time to time imposed by order in Council. Notwithstanding anything in this Act contained the Governor in Council may, by order in Council, whenever it shall be deemed necessary to assure speedy development, provide that the royalty reserved under this Act shall not be imposed or collected upon any ores mined, wrought or taken, until after five years from the date of the mining lease; and whenever concentrating, smelting, reducing or other works are established within the Province, the Governor in Council may, by order in Council, make a reservation of a sufficient tract of woodland in the vicinity of such

works as may be deemed necessary to provide fuel and timber for mining purposes, in connection with the successful operation of said works."¹

¹ Added by 55 Vict. c. 10, s. 1.

RENEWALS.

102. The lessees of mines other than gold or gold and silver mines in this Province, their executors, administrators and assigns, and mining companies, shall, upon giving notice in writing to the Surveyor-General at least six months previous to the expiration of their leases respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term, upon the same terms, conditions and covenants as contained in the original lease, or as prescribed by this Act, or by any Act that may be passed by the Legislature of this Province, and in like manner upon getting a like notice before the expiration of such renewal term to a second renewal and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term, to a third renewal and extension of twenty years from and after the expiration of such second renewal term, provided that at the time of giving such notices and the expiration of such terms respectively, the said lessees, their executors, administrators and assigns, are and shall continue to be bona fide working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 104 of this Act; and provided, that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked a larger area than five square miles.

- (a) In case the workings of a colliery extend under ground covered by two or more leases, the Surveyor-General may renew such leases on it being satisfactorily proven to him that the ground covered by said leases is necessary to the satisfactory and profitable working of said mine;
- (b) In case the workings of one area have been extended into an adjoining area, even if there is now no coal being mined in the first area, both leases may be renewed in whole or in part, as may be decided by the Surveyor-General on the special circumstances of the case;

- (c) In the case of works being prosecuted outside of an area for the purpose of mining the coal in said area, the lease of said area may be renewed on it being satisfactorily shown to the Surveyor-General that said works are being continuously and effectively prosecuted;
- (d) In the case of an unworked area adjoining a mine being worked, the works of which would be a natural outlet of said unworked area, and that it was necessary to the profitable working of the mine, the lease of said area may be renewed on it being shown to the Surveyor-General that said workings would be a natural outlet for the product of said unworked area, and that said unworked area was necessary to the profitable working of the mine.

SURRENDER.

103. The holder of any lease may at any time surrender the same by notice in writing, signed by him and filed, together with his counterpart of lease in the Crown Land office; but in case the counterpart of the lease has been lost or cannot be obtained, an affidavit to that effect made by the lessee will be received in place of such counterpart; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease for or in respect of any act, matter or thing for which at the date of such surrender he was liable under the terms of such lease.

FORFEITURE.

104. Whenever it shall be represented to or shall come to the knowledge of the Surveyor-General that work upon any mine or mining operations upon any area held or claimed under a lease from the Crown, or under a lease granted pursuant to the said Act, or any Act or Acts in amendment thereof, have been abandoned or not carried on for the space of one year, or have not been efficiently and continuously carried on, or have been carried on only colorably, or to prevent a forfeiture under the terms of such lease, the Surveyor-General shall cause a notice to the effect of the form in Schedule (E) to this Act to be personally served upon the lessee, or some one of the lessees, where more than one of them are included in the same lease, or on his agent or their agent, or person principally employed on the premises, or shall cause such notice to be posted upon the premises leased, where no person can be found upon whom to make service

thereof, informing him of such charge or information and appointing a time to be not less than thirty days after the service or posting up of such notice, and also a place for the investigation thereof. At the time and place appointed the Surveyor-General shall proceed to investigate such case and decide thereon, and may either cancel such lease, or extend the time during which it shall be necessary to commence and carry on effective mining operations on the leased premises, or may make such other order or decision as may seem to him to be just and equitable; and shall thereupon give notice of his decision to the lessee, or his agent, by causing such notice to be served or posted up as in this section above directed; and in case further time is given to the lessee or lessees, if within such term as may be prescribed by the Surveyor-General the lessee or his assignee shall not commence and prosecute effective mining operations to the satisfaction of the Surveyor-General, according to the time, intent and meaning of the terms, covenants and stipulations in the lease contained, and of this section, such mining areas so leased shall be forfeited, and the Surveyor-General, in case he decides to cancel such lease, or in case the conditions on which further time is given are not complied with, may grant a new lease or new leases of such area.¹

¹ 59 Vict. (1896) c. 27, s. 2 (passed 20th March, 1896).

105. No mere colorable working shall prevent a forfeiture; and the Surveyor-General shall have power to examine witnesses on oath, and receive all other necessary testimony in respect of the mining operations; and if the decision shall be, that such operations are not effective, but merely colorable, the mine or mines shall be declared forfeited, and notice of the decision shall be given in accordance with the provisions in section 104.

106. The decision of such Surveyor-General shall be in the form in Schedule (F), and the lessee or assignee may appeal to the Supreme Court or a Judge thereof at Chambers against such decision; any party desiring to appeal from such decision shall give notice in writing to the Surveyor-General of his intention to appeal within twenty days after such decision, or within twenty days after such decision being made known to the party dissatisfied therewith, but always within one year from the date of such decision, and shall make and file with such notice an affidavit, that he is dissatisfied with such judgment or decision, and that he verily believes the lease should not have been forfeited, and shall also set forth therein the grounds of his appeal, and shall within ten days thereafter enter into a bond with two sureties, in the penalty of six hundred dollars, to enter and prosecute his appeal according to the

provisions of this Act, and pay all costs which may be adjudged against him by the Court of Appeal; and thereupon the Surveyor-General shall file such notice and affidavit, together with all papers and documents connected with such appeal, with the Clerk of the Pleas at Fredericton, on or before the first day of such term.

107. Where notices are to be posted on the premises under this Act, or any of the sections thereof, and the areas in respect of which the notices are to be posted shall be covered with water, the notices may be posted on the land, as near as conveniently may be to the areas so covered with water.

108. Whenever a lease of a mine other than gold or gold and silver shall become forfeited under this Act, the Governor in Council may direct such additional terms to those prescribed thereby on which such mine shall be relet or regranted by the Surveyor-General.

109. There shall be kept in the office of the Surveyor-General maps of the different mining districts in the Province, on which shall be delineated as accurately as may be all the areas under license or lease as mines other than gold or gold and silver mines, and also a book or books of registry, in which shall be registered all the licenses and leases of such areas, and such maps and book or books shall be open to the inspection of the public.

110. The provisions of the foregoing sections from 81 to 109, both inclusive, shall apply only to mines other than gold and gold and silver mines.

MISCELLANEOUS.

111. The Surveyor-General may lease Crown lands, being within the limits of any proclaimed gold district, or comprising any tract within which the mines and minerals other than gold or gold and silver are under license or lease, for purposes other than mining, reserving always the right of present or future lessees of mining areas therein, and subject to such other reservations, and for such time and upon such conditions as the Governor in Council may direct; and may also sell any timber not previously disposed of growing or being upon any part of the Crown domain included within such gold district, or other tract under license or lease for mines or minerals other than gold or gold and silver, upon such terms as the Governor in Council shall authorize and direct.

112. No lease granted under the provisions of this Act shall be void against any subsequent purchaser, mortgagee for valuable con-

sideration or judgment creditor, by reason of such lease not having been previously registered in accordance with the provisions of the chapter of the Consolidated Statutes, of the "Registry of Deeds and Wills."

113. The Governor in Council may at any time by proclamation as in this Act provided, declare a gold district, which shall contain an area or areas under license or lease, for the purpose of searching for or working mines and minerals other than gold or gold and silver; and in such case the areas under such license or lease shall, notwithstanding such license or lease, become subject to all the provisions of this Act which relate specially to all gold districts and gold and silver mines, under such regulations as the Governor in Council shall make.

114. The Governor in Council is authorized to make rules and regulations relative to gold districts, and gold or gold and silver mines and mines other than gold or gold and silver mines, and licensing and leasing the same, and to the pumping, draining, ventilation, working, management, care, possession and disposal of the same, and to all other matters connected with the same; and to make such rules or regulations general or applicable only to particular districts or localities as may be deemed best; and all such rules and regulations when published in the Royal Gazette shall have the force of law until annulled by the Governor in Council; provided such rules and regulations shall not be repugnant to the laws of the Province or the provisions of this Act, and such rules and regulations may in like manner be altered, modified or cancelled as circumstances shall require.

115. The forms to be used under this Act shall be prescribed by the Governor in Council from time to time.

116. Any lessee or licensee of mining areas lying beneath the waters of the sea may make, or cause to be made, tunnels from the adjacent land above high water mark under the water to such mining areas, doing as little damage as possible to the owners or lessees of the land in which such tunnel shall be made, and the intervening land covered with water, and the mines therein contained.

117. The damages of such tunnelling shall be agreed for, determined, settled and paid, as directed in this Act from section 17 to section 27 inclusive, and also section 90.

118. If the lessee or licensee of such mining areas cannot agree with the owner or owners of the land, or the lessee or licensee of the mining areas through which it is necessary to drive such tunnel, the Surveyor-General, subject to the approval of the Governor in Council, shall determine where such tunnels shall be made or commenced, the number of such tunnels, the size, width and depth thereof, the quantity of land to be taken and occupied for the same, and the course and direction which such tunnels are to take through the intervening lands covered with water, and the mines therein contained, and he shall cause a plan thereof to be made and filed in the office of the Registrar of Deeds for the county where the lands so taken for the commencement of the tunnels shall be situated.

119. Leases of mining areas shall be issued in duplicate; and such leases shall be registered in the Crown Land office.

120. A certificate of such registry, with the day and year thereof, shall be endorsed on the duplicate delivered to the lessee.

121. In case of a lease or license, where there are more than one lessee, a declaration in duplicate may be made and signed under seal by all the lessees, or their heirs and assigns, stating the proportion owned by each lessee, and such declaration shall be duly proved on oath and registered as hereinbefore mentioned.

122. All transfers of any interest in mining leases hereafter to be made, shall be registered as aforesaid, and a certificate of such registry shall be endorsed on every transfer, as in the case of mining leases; and such registry and certificate shall be conclusive evidence of the transfer of such mining interests.

As to the construction of an agreement to acquire mining rights, see *Goold v. Stockton*, (1891) 31 N. B. R. 57.

123. The forms of declaration and transfer for the purposes of this Act shall be as in Schedules (B) and (C) respectively.

124. Every company now or hereafter incorporated under any Act of this Legislature, or by any other competent authority, holding or working mines under this Act, shall file a copy of their charter or Act of Incorporation and by-laws or regulations in the Crown Land office, before any such company shall commence work, together with a list of the officers of such company, and all changes of officers made shall also be certified to the Crown Land office; and until such certificate is filed no such new official need be recognized by the Surveyor-General as an official of any such company.

125. A description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind (except licenses), relating to or in any way affecting the title of gold or gold and silver, coal or other mines, shall be recorded according to Schedule (D) in the Crown Land Office; and all licenses and a description of all mortgages, bills of sale, attachments, judgments, transfers, and documents of title of any kind affecting such licenses, shall be registered in the book of application for mining rights in the Crown Land Office, in the same manner as such licenses and descriptions are now registered; provided that such mortgages, bills of sale, attachments, judgments, transfers, or documents of title, shall proceed from or be charged against the parties who may appear upon the registry to be the lessees or licensees of such gold or gold and silver, coal or other mines, so to be transferred or to be encumbered; and any such mortgage, bill of sale, attachment, judgment, transfer or document of title shall be void as against any subsequent bona fide mortgage, bill of sale, attachment, judgment, transfer or document of title which shall be previously registered.

126. A duplicate, or true copy certified by a notary under his seal, of every transfer, mortgage or other conveyance registered as above, shall be filed in the Crown Land Office before a certificate of registry is given.

127. If the applicant for a mining lease shall not execute such lease and file it in the Crown Land Office for execution and registry by the Surveyor-General within one year from the time of his application, the areas shall be considered vacant, and applications for a lease or license may be received.

128. The Surveyor-General shall have power to cause witnesses to be brought before him in all contested cases or matters which he has power to investigate and decide, to be examined under oath, which oath the Surveyor-General is hereby empowered to administer, and like powers are hereby conferred on his deputy in all contested cases and matters before them which they have power to investigate and decide; and the Surveyor-General and Deputy shall have power to take affidavits under oath, and to administer the oath in all such cases, and to administer oaths in all cases where affidavits are required by this Act, except where such oath is required to be administered by a Commissioner of the Supreme Court. The Surveyor-General, or any Deputy Surveyor-General, shall not receive any application for license or lease of any mines or mining areas, the right

to a license or lease of which is at the time of such application in dispute before the Surveyor-General or Deputy, or any Court of Appeal.

129. Where royalties are due and owing to the Crown, the Governor in Council shall have power to order the Surveyor-General to issue a warrant under his hand and seal of office, directed to the sheriff of the county where the mine in respect of which such royalties are due is situated, requiring such sheriff, immediately on receipt thereof, to levy on the goods and chattels used in working and operating such mine; and if within the space of twenty days next after such levy, such royalties so due are not paid to such sheriff, to proceed to sell the same, or so much of such goods and chattels as shall be sufficient to pay such royalties and his fees, first having publicly advertised the same for the space of not less than ten days before such sale, and to make return of such warrant, and pay over the sum due for such royalties to the Surveyor-General within thirty days from the issuing thereof. Upon the receipt of such order, the Surveyor-General shall issue such warrant and deliver the same to such sheriff, who shall immediately execute the same, according to the exigencies thereof, and the sheriff's fees on such execution shall be the same as for executing a writ of execution out of the Supreme Court in a civil suit.

130. Leases and licenses shall terminate on the recurrence of the day on which they bear date in the year of their termination, and after ten of the clock of the forenoon of the following day the areas may be leased or licensed anew; but nothing contained in this section shall prevent the renewal and extending of licenses and leases as hereinbefore provided.

131. If any lease or any share or interest therein become transmitted or transferred in consequence of the death, bankruptcy or insolvency of any lessee, or in consequence of the marriage of any female lessee, or by any means other than a transfer according to the provisions of this Act, such transmission or transfer shall be authenticated by a declaration of the person to whom such lease or share or interest therein has been transmitted or transferred, stating the circumstances of such transmission or transfer, and describing the manner in which, and the person to whom such property has been transmitted or transferred; and such declaration shall be made before the Surveyor-General or Deputy Surveyor-General, or a justice of the peace.

132. If such transmission or transfer shall have taken place by virtue of the bankruptcy or insolvency of any lessee, such declaration shall be accompanied by such evidence as may for the time being be receivable in Courts of Justice, as proof of the title of persons claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female lessee, such declaration shall be accompanied by a copy of the register of such marriage, or other legal evidence of the celebration thereof, and shall declare the identity of such female lessee, and if such transmission shall have taken place by virtue of any testamentary instrument or by intestacy, then such declaration shall be accompanied by the probate of the will, or the letters of administration, or any copy thereof that may be legal evidence, or would be received in Courts of Justice as proof of such transmission.

133. The Surveyor-General, upon the receipt of such declaration so accompanied as aforesaid, shall enter the name of the person entitled to the lease, or any share or interest therein under such transmission or transfer, in the books of registry as so entitled thereto.

134. The Lieutenant-Governor in Council is hereby authorized and empowered to name any head of Department in the Government to perform the duties and exercise the powers by this Act conferred upon the Surveyor-General, in case of the absence of the Surveyor-General, or of vacancy in the office, or for any other cause deemed by him sufficient therefor, and such other head of Department shall, in performing any of the duties or exercising any of the powers conferred by this Act, be styled "Acting Surveyor-General."

135. The Deputy Surveyor-General may act for and instead of the Surveyor-General, or for and instead of the Acting Surveyor-General in any emergency, and the Governor in Council is also hereby authorized to appoint a Chief Inspector, or County Inspectors of Mines, or such other officers as he may deem necessary for the due carrying out of the provisions of this Act, and such officers shall be paid such compensation for their services as may be fixed by the Governor in Council. Payment to be made by warrant in the usual manner out of the moneys received under this Act.

136. The provisions of this Act shall become applicable to all mining leases and the lessees under all mining leases and their representatives and assigns, which have been issued prior to the going into operation of this Act, so far as such provisions are capable of being applied thereto, but this section shall not be operative until the expiration of one year after the passing of this Act.

137. Any of the powers by this Act conferred upon the warden of a municipality may, in case the warden is an interested party, or there be no warden at the time, be exercised by a Judge of the County Court of the County in which the lands lie, or a Judge of the Supreme Court.

138. In respect of granted lands wherein the owner of such lands (or the assignee of such owner who has gone to expense in the purchase, as he believed, of mining rights or interests) has made explorations, or actually commenced mining operations before the passing of this Act no lease or license shall be made under this Act to any person, other than such owner or assignee, until such owner or assignee has had notice of application having been made therefor, which notice may be sufficiently given by publication thereof by the Surveyor-General for thirty days in the Royal Gazette, or in such manner as the Surveyor-General shall direct, and thereupon the Governor in Council shall examine into the matter, and take such action as in his discretion shall seem just, taking into account the circumstances of each case; provided however, that any such owner or assignee shall be subject to the payment of all royalties, and to the other provisions of this Act, so far as the same are applicable to his case.

138a. A lease of mines and minerals, which by Statute or otherwise have been exempt from royalty to the Crown, covering an area not exceeding one square mile in one block, may be granted by order of the Governor in Council after a license to search or work has been granted upon application of the licensee or his executors, administrators or assigns, subject to the provisions contained in section 138.

138b. Notwithstanding anything in this Act contained, the Surveyor-General shall have the power, whenever he may deem it advisable so to do, upon the application of any person interested, to grant upon such terms and for such period as he may see fit a license to the owner of any land to search for and mine therein manganese only.

139. Chapter 18 of the Consolidated Statutes, of "Mines and Minerals," is hereby repealed, and so much of chapter 19 of the Consolidated Statutes, of "The Escheat of Mining Leases and Mill Reserves," which is inconsistent with any of the provisions of this Act, is also hereby repealed.

139a. This Act [55 Vict. (1892) c. 10 (passed 7th Apl. 1892)] shall be taken, read and construed as part of The General Mining Act.

CHAPTER XVII.

NOVA SCOTIA.

"THE MINES AND MINERAL ACT, 1892." ¹

Act, 1892, c. 1.

Passed the 30th day of April, A.D. 1892.

1. The word "mine" in this chapter shall mean any locality in which any vein, stratum, or natural bed of coal, or of metalliferous ore or rock exists, or shall or may be worked. The verb "to mine" in this chapter shall include any mode or method of working whatsoever whereby the ore, earth, or soil, or any rock, may be disturbed, removed, washed, shifted, smelted, refined, crushed or otherwise dealt with for the purpose of obtaining gold, coal, iron, copper or any other ore or metallic substance, and whether the same may have been previously disturbed or not.

The term "gold-bearing quartz" shall be held to mean all gold-bearing auriferous rock in situ.

"Alluvial mine" shall be held to mean gold-bearing earth or rock elsewhere than in situ.

The terms "Commissioner" and "Commissioner of Mines" shall be held to mean the Commissioner of Public Works and Mines, and the term "Deputy" shall be held to mean the Deputy Commissioner of Public Works and Mines, and the term "Deputy Commissioner" shall be held to mean Deputy Commissioner of Mines.

"Lessee" shall include and mean sub-lessee or any person deriving title to a mine through a lessee of the Crown, unless such interpretation is repugnant to the context or to the spirit of this chapter.

The words "licensed mills," when used in this chapter, shall signify mills and machinery licensed under this chapter, and the words "licensed mill owner," the person or persons to whom such license shall be granted.

The words "prospecting license," when used in this chapter, shall signify a license to search for mines of gold or gold and silver.

The words "license to search," when used in this chapter, shall signify a license to prospect or search for mines other than gold or gold and silver.²

¹ The Statute Law of Nova Scotia relating to Mines and Minerals is contained in "The Mines and Minerals Act, 1892," chapter 1 of the Acts of 1892, as amended by chapters 2 and 3 of the Acts of 1892; chapters 2 and 3 of the Acts of 1893; chapters 4 and 5 of the Acts of 1897, and chapters 26, 27 and 28 of the Acts of 1898.

² Asphaltum is included in the exception in certain Royal grants in the Province of New Brunswick of "all coals," and also all gold, silver, and other mines and minerals."

The words "mines and minerals" in the exception are to be understood in their popular and ordinary, and not in their scientific meaning.

Trover will lie in Nova Scotia for minerals, which have been taken from a mine out of the Province and removed here. *Gesner v. Gas Company*, (1853) 2 N. S. R. 72; *James*, 72.

The commissioner has been held under section 84 of "The Mines Act," R. S. N. S. (s. 4) c. 7, to have no power to inquire into the validity of or to cancel a lease or a grant of the Crown. *Re Jeffery McColl*, (1889) 22 N. S. R. 17.

2. The office of the commissioner shall be opened at ten of the clock in the forenoon and closed at four of the clock in the afternoon, except on Saturdays, when it shall be closed at one of the clock in the afternoon, public holidays, and such days as the Governor in Council may direct; and all applications for licenses or lease, shall be made during such office hours, and all such applications made at other times shall be void, save that applications received by post at said office out of office hours shall be deemed to have been received immediately after the commencement of the next office hours.

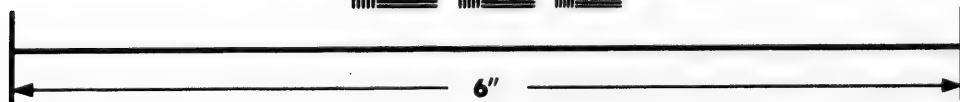
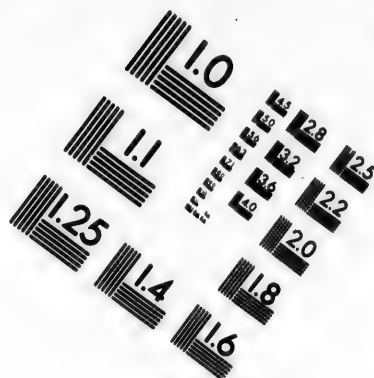
3. The Governor in Council shall continue to be authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Commissioner of Public Works and Mines for the Province, who shall be a member of the executive Council of the Province, and suitable persons to act as Deputy Commissioners of Mines in the several gold districts hereinafter provided for, and to define the limits of the jurisdictions of such Deputy Commissioners respectively; and by virtue of and during the continuance of such appointment such Commissioner of Public Works and Mines within the Province, and such Deputy Commissioners within the gold districts for which they are respectively appointed, shall exercise the powers of Justice of the Peace. Provided always, that no such Commissioner or Deputy shall act as a Justice of the Peace at any Court of special or general sessions, or in any matter out of session, except

for the administering of oaths, the preservation of the peace, the prevention of crimes, the detection and commitment of offenders and the carrying out of the provisions of this chapter.

4. The Governor in Council is authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Deputy Commissioner of Public Works and Mines for the Province, and to define the limits of his authority and jurisdiction; and by virtue of and during the continuance of such appointment, such Deputy Commissioner of Public Works and Mines shall within the Province exercise the powers of a Justice of the Peace in the same manner and with the same limitations as in the next preceding section contained as to the Commissioner.

5. The Governor in Council is authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Inspector of Mines, who shall be a competent, scientific, practical Mining Engineer, whose duty it shall be to visit and inspect at such times as may be deemed necessary, the various mines belonging to or under lease from the Crown, to ascertain if the laws, stipulations and agreements relative to the working and management of such mines, and to the payment of rents and royalties accruing therefrom, are complied with, and if the said mines are being worked in a scientific, workmanlike and effective manner, due regard being had to maintain the value of such mines, and providing for the safety and protection of the persons employed therein, and any further duties that may be assigned to him under the provisions of this chapter, or of any other Act of the Province now in force or hereafter to be passed by the Legislature; and he shall from time to time report in accordance with the facts to the Commissioner. The Governor in Council may appoint one or more Deputy Inspectors, who shall be competent, practical men, and who shall have the same duties as the Inspector, but shall be under his direction. The Governor in Council may appoint one or more Mining Surveyors, whose duties shall be performed under the direction of the Inspector of Mines. The salaries of the Inspector and Deputy Inspectors of Mines shall be fixed by the Governor in Council.

6. The Commissioner of Public Works and Mines, the Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines, the Inspector and Deputy Inspectors of Mines, shall each hold office during pleasure, and shall give bonds to Her Majesty the Queen, for the faithful discharge of their duties, in such sums and



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with such sureties as may be fixed by the Governor in Council, and neither they nor any employee of the Mines Department, shall be directly or indirectly interested in any mine or mining operations, or in the proceeds or profits thereof, nor shall any of them act as the agent or attorney of any person interested therein, under penalty of one thousand dollars for every offence against this section, to be recovered in the Supreme Court by action in the name of the Queen, instituted by the Attorney-General.

7. The Deputy Commissioner of Public Works and Mines, the Deputy Commissioner of Mines, and the Inspector of Mines and Deputy Inspectors, shall be incapable of being elected to or of sitting or voting in the House of Assembly, and any or either of them who shall so sit or vote shall forfeit two hundred dollars for every day on which he shall so sit or vote, to be recovered in the Supreme Court by any person suing therefor. None of such officers shall take any part, or use any influence, directly or indirectly, in the election of any representative to sit in the Assembly, under a penalty of two hundred dollars for every such offence, to be recovered in the Supreme Court, by action in the name of the Queen, instituted by the Attorney-General.

8. The Governor in Council is authorized to select and appoint a Board of Examiners, to be composed of the Inspector of Mines and nine persons conversant with coal mines, such persons to be appointed biennially by the Governor in Council. Three of them shall be mine managers, three working miners, and three experienced mining engineers, or men of practical ability, not in connection with any coal mine in operation. The Deputy Inspectors of Mines may be put on the Board in lieu of mining engineers. It shall be the duty of the Board to examine colliery officials. The Province for the purpose of this section, shall be divided into three districts, called respectively Cumberland, Pictou, and Cape Breton districts, as defined from time to time by the Commissioner, and the Board for the purpose of examination shall be divided into divisions, one division for each district. Each division shall examine all candidates in its respective district. The papers of the candidates shall, for the purpose of examination, be referred to a general meeting of the Board, at which there must be present at least one member of the Board from each district, and the successful candidates shall be recommended for certificates under this Act, or under chapter 8, Revised Statutes, "Of the Regulation of Mines."

OF GOLD AND GOLD AND SILVER MINES.

9. The Governor in Council, on being satisfied of the discovery of gold or gold and silver in any locality, may, by proclamation in the *Royal Gazette*, of this Province, declare such locality to be a gold district, and assign limits and boundaries to such district, and from time to time enlarge, contract or otherwise alter such limits.

(a) The Governor in Council may at any time, by proclamation in the *Royal Gazette* aforesaid, declare that any locality previously proclaimed a gold district has ceased to be a gold district.

10. All mines of gold or of gold and silver shall hereafter be laid off in areas of two hundred and fifty feet length [magnetic]¹ meridian, north and south, and one hundred and fifty feet east and west. These areas shall be known and described as Class Number One.

¹ By Act of 1893, c. 3, s. 1, the word "true" was struck out and the word "magnetic" inserted instead.

11. Mining areas, which, before the passing of this chapter, have been laid out in the manner heretofore in force, shall not be affected by the provisions of the next preceding section. Should such areas for any cause revert to the Crown, the commissioner may direct the same when applied for, to be laid out in such manner as he may deem advisable.

"And when any area or areas hereafter applied for under prospecting license or lease may be bounded upon any area or areas that have been applied for before the passage of this Act, or be so situated that the courses and boundaries thereof may run upon any area or areas heretofore applied for, then the Commissioner shall have power to direct that such areas so applied for after the passage of this Act shall be laid out in such manner as he may deem advisable." (Added by Acts 1893, c. 3, s. 2.)

12. Areas shall be laid out as far as possible uniformly and in quadrilateral and rectangular shapes. Surface measurements of areas shall be horizontal, and each area shall be bounded by vertical planes passing through the horizontal surface lines.

The relators in this case sought to have a lease granted by the Crown of certain gold mining areas set aside on the ground that it had been granted improvidently, and in derogation of relators' rights. They had taken out a lease in April, 1862, but were in arrears for rent thereon in February, 1863, when a new lease was taken out and some rent paid on its account, but none of the rent then overdue paid. After working

on the areas for a month all operations were discontinued, and in October of the same year the gold commissioner declared the lease forfeited, and granted the areas to other parties. This lease also being forfeited, another lease was granted to third parties in 1866, and in 1868 the relators sought to have this lease set aside, alleging that they had been misled as to the law by the deputy gold commissioner, but this was contradicted.

Held, that the relators had not shown any ground for the lease being set aside, they having forfeited all claim to the areas, and that, in any event, they were too late in applying for relief. *Queen v. Snow*, (1873) 9 N. S. R. 373; 3 N. S. D. 373.

13. Surveys of property held under lease may be ordered by the Commissioner, and shall be made by persons duly authorized by the Commissioner. Lessees of the property to be surveyed shall be notified by the surveyor to be present on the ground on the day and hour named for the survey, and the surveyor shall as far as practicable notify the holders of leases of adjoining properties.

(a) At the time appointed, the surveyor shall proceed to make the survey as accurately as possible, and define and mark each corner of the property or properties surveyed; if no objection be taken at the time by any of the parties interested, the corners so marked by the surveyor shall be held to be fixed and determined, save as in the next sub-section provided.

(b) If the lessee or lessees interested in the survey, or his or their representatives, on account of unavoidable circumstances, fail to appear at the time appointed for the survey to be made, or if he or they feel dissatisfied with the corners marked by the surveyor, he or they must state their objections to the Commissioner, in writing, within two months from the date of the survey, otherwise the survey that has been made shall be held to be valid, and the boundaries indicated by such corners to be true and fixed.

(c) The Commissioner, on receiving a statement of objections, as provided in the preceding sub-section, and a sum of money equal to double the cost of the first survey, may order a second survey, which shall in all cases be held to be valid and binding on all parties interested. If the first survey is found to be correct, the expense of the second survey shall be paid out of such sum, and the balance of such sum, if any, shall be repaid to the party or parties objecting, otherwise the expenses shall be borne by the Department, and the sum of money deposited by the applicant refunded to him.

(d) Surveyors shall have power and are hereby required to administer oaths to the chainmen and others employed by them to assist

in making the survey, binding them to the due and faithful performance of the duties they may be called upon to perform,—the form of oath to be similar to that in Schedule H to this chapter.

14. The Commissioner shall also cause to be established, within three months after application for the same by any lessee or licensee, in any proclaimed district, and also in any unproclaimed district where at least one hundred areas have been applied for, a base line of not less than four hundred and fifty feet in length, to be laid off [magnetic] ¹ meridian east and west. Such base line shall be marked at its two ends or termini by substantial, permanent, and accessible monuments, with proper inscriptions marked thereon; and all areas shall be laid off from this base-line by lines parallel to the same or at right angles to it, or its course prolonged; and any person removing, altering, obliterating or defacing such monument or monuments, or any mark thereon, shall forfeit a sum of not less than one hundred nor more than five hundred dollars for each offence, to be recovered by the Commissioner or any person suing therefor in the same manner as an ordinary debt.

¹ By Acts of 1898, c. 27, s. 2, the word "true" was struck out and the word "magnetic" was substituted therefor.

15. There shall be kept at the office of the Commissioner a book of record for proclaimed gold districts, and for unproclaimed districts or places, in which applications for leases of areas shall be entered, and another book in which applications for prospecting licenses shall be entered. All applications for areas shall be entered in the proper book with the precise time of their being made, with the description of the areas applied for, the amounts paid, and the names of the applicants in full, with their address; and each Deputy Commissioner shall keep a book of record, wherein shall be entered all applications for areas, with the precise times of their being made, showing the descriptions of the areas applied for, the amounts paid, the names of the applicants in full, with the names of the parties paying, the amounts of royalty received from the licensed mill owners, the names of the licensed mill owners, the amounts of royalty received from others than mill owners, the names of parties paying such royalty, the distinguishing numbers of the areas, or the numbers of the leases covering the areas from which the gold, or gold and silver, was obtained, in respect of which such royalty was paid; and each deputy shall each week forward a return to the office of the Commissioner, which return shall be a true transcript of the entries made in such book of record during the week

previous to the making of such return, and shall then remit to the Commissioner the several sums so paid. Such book of record shall be open at all reasonable times to the inspection of all persons desiring to see the same, on payment of a fee of twenty-five cents.

16. The Commissioner shall cause to be prepared, and shall keep in his office, plans of all gold districts, with the areas numbered thereon, and on which all areas applied for shall be distinctly designated by numbers. Each Deputy Commissioner shall prepare and keep a duplicate of a plan of the district under his jurisdiction, on which all areas applied for in such district shall be distinctly designated; and shall in his weekly returns report the distinguishing numbers of the areas applied for, as indicated on such plan.

17. All applications for leases of areas (and for prospecting licenses to search for gold and silver hereafter)¹ shall be made to the Deputy Commissioners for the districts in which the areas are situated, if there be deputies for such districts; and where there are no deputies for such districts, or where the areas applied for are not within any proclaimed district, the applications shall be made to the Commissioner or Deputy; and no such applications shall be received for areas already applied for or under license or lease.²

¹ Inserted by Acts of 1893, c. 3, s. 3; see also Acts 1893, c. 3, s. 4.

² Held, that the 4th Rev. Stats. c. 9, contemplates the grant of both licenses and leases in all districts, whether proclaimed or unproclaimed. The first applicant, whether for a license or a lease, is entitled. Applications must be made in writing to the Commissioner or Deputy Commissioner. A licensee is entitled to a lease under s. 42. "Occupying and staking off," is not a condition precedent to all leases in an unproclaimed district. Not reported below. *Mott v. Lockhart*, (1883) 8 App. Cas. 568; (1883) 52 L. J. P. C. 61.

The provisions of the Mines Act for the appointment of arbitrators, the making of an award and the payment of damages where a mining lease is obtained over private lands, and no agreement is made with the owner, are conditions precedent to the right of entry.

Leases may be granted in unproclaimed as well as proclaimed districts.

The provisions of the Act limiting the number of areas to be included in a lease is directory only, and disregard of it by the Commissioner will not invalidate a lease.

It is too late to take exception to defects or irregularities in an application for a license to search, or in the license itself after the application for the license has been received and acted upon and a lease issued, unless fraud is shown upon the part of the licensee in respect of a matter material to his right to get a lease.

When application is made for a license to search, and a lease is subsequently obtained, without the license to search having actually issued, the non-issue of the license to search is no objection to the lease.

In signing a lease it is not incumbent upon the Commissioner of Mines to attach to his signature his title of office, if the capacity in which he signs appears sufficiently from the body of the document.

The expressions "district" and "gold district" in the statute do not necessarily mean a "proclaimed gold district."

The fact that an application for a license to search conflicts with a previous application, will not invalidate either the application or the subsequent lease, if at the time of the granting of the lease the first application has expired without having been acted upon.

Defendants' application described the areas applied for as "commencing at a birch tree marked A. D., and being on the east side of Salmon River about five miles above the bridge." It appeared that the tree was about 2,000 feet distant from the river, and considerably less than five miles from the bridge in a direct line.

Held, that the tree being otherwise sufficiently identified, the description was not vitiated by the errors as to locality and distance. *Fielding v. Mott*, (1885) 18 N. S. R. 339; (1885) 6 R. G. 339; (1885) 6 C. L. S. 491.

On appeal to the Supreme Court of Canada it was held, affirming the judgment of the Court below, that where a mining lease was obtained over private lands in Nova Scotia, the lessees must obtain from the owners of the land permission to enter either by special agreement or in accordance with the provisions of "The Mining Act," 4th R. S. c. 9.

Mining leases may be granted in all districts whether proclaimed or unproclaimed.

A mining lease is not invalid because it includes a greater number of areas than is provided by the statute, such provision being only directory to the commissioner. The issue of a lease cures any irregularities in the application for a license, or in the license itself in the absence of fraud on the part of the licensee. *Fielding v. Mott*, (1886) 14 S. C. R. 254.

18. Every application shall be in writing, defining the area or areas applied for, and shall be accompanied by a payment of two dollars for each and every of such areas; which shall be considered to be the annual payment in advance for the first year that the lease is outstanding, and the Commissioner or Deputy Commissioner, as the case may be, receiving such application shall endorse thereon the precise time of such receipt.

(a) This sub-section, as it was originally enacted, has been repealed by Statutes of 1893, c. 2, s. 2, and the following substituted:

And whenever any area shall have been leased as herein provided, the owner thereof shall, on or before the expiration of the first year that the lease is outstanding, pay in advance to the Com-

missioner or Deputy Commissioner, as the case may be, the sum of fifty cents for each and every of such areas or portion of every area contained in his lease, and shall thereafter continue to make the same payments annually in advance, and in the same manner for the remaining number of years that the lease is outstanding. In case any such annual payment in advance shall not be made, notice of such default shall forthwith be sent by the Commissioner or Deputy Commissioner by registered letter, mailed to the post office address of the lessee or lessees, and if such rental be not paid within thirty days after the posting of such notice, the lease will become and is hereby declared to be forfeited at the expiration of the said period of thirty days. The payments made at the time of application shall be considered the annual payments in advance for the first twelve months, and applications for licenses or leases for the areas hereby declared forfeited may be made at the mines office, at ten o'clock of the morning of the next day after the last day of the said period of thirty days, and the Commissioner or Deputy Commissioner, as the case may be, may receive the same.¹

¹ See also Acts 1893, c. 2, ss. 4, 5.

(b) Whenever, during any year, the lessee of any area shall have performed thereon the labour required under section 32 of this Act, and shall have made return thereof to the Commissioner, he shall be entitled, upon application, to a refund of the payment in advance for that year.

(c) It shall be lawful for the lessee of any area, by duplicate agreement in writing with the Commissioner, to avail himself of the provisions of this chapter, so far as relates to the annual payment in advance and the refund thereof, and such advance payments shall be construed to commence from the nearest anniversary of the date of the lease. So long as the rental is paid as provided in this subsection and sub-section (a), the area so held under lease shall not be liable to forfeiture for non-working.¹

¹ See Acts of 1893, c. 2, s. 6.

(d) The provisions of this section and sub-sections shall apply only to mines of gold and gold and silver.

19. Every lease granted under the provisions of this chapter shall be executed on the part of the Crown by the Commissioner of Public Works and Mines under his hand and seal of office, and on the part of the lessee under his hand and seal, signed and affixed thereto by the lessee or his duly authorized attorney; and when a

lease is executed by an attorney, the instrument conferring such power of executing, shall be filed in the office of the Commissioner before such lease is executed by such attorney; and such lease shall be in the form in Schedule A, hereto annexed, and shall contain all the grants, demises, reservations, covenants, promises, provisions, conditions and agreements mentioned or intended in or by such Schedule; and shall be subject to and contain the reservations of the rights of the owners of the soil, their heirs and assigns; and such lessee, his executors, administrators or assigns, where such lease is granted on private lands, shall, before making entry on such lands, obtain from the owners thereof permission to enter, either by special agreement or in accordance with the provisions of this chapter.¹

¹ It has been decided under "The Mines Act," R. S. N. S. c. 7, s. 19, that, "Before acquiring the right to appoint an arbitrator . . . the warden must be satisfied of the existence of several facts. The inquiry into and determination of these facts involve the exercise by him of judicial discretion, and in addition to that the act of appointment was in itself also a judicial act. . . . The warden having judicial duties imposed upon him was bound on their performance to observe the rules which govern in such cases—to the extent at all events of hearing the other side. See *Lord v. Lord*, (1855) 5 E. & B. 404. In *re Hopper*, (1867) L. R. 2 Q. B. 370-6, and the observations of Bayley, B., in *Capel v. Child*, (1832) 2 Cr. & J. 558." Per Meagher, J., in *Palgrave Mining Co. v. McDonald*, (1891) 24 N. S. R. 74-75; (see also *Nichols v. Cumming*, (1877) 1 S. C. R. 407, per Strong, J.), but see *Palgrave Gold Mining Company v. McMillan*, (1892) App. Cas. 460, referred to in note to sec. 21, *post*. Also that the award cannot be made until after the extent of territory to be occupied has been determined by the Inspector. (Ib.)

Such an agreement or proceeding by way of arbitration, under section 20 *et seq.*, is a condition precedent to the right of the lessee to enter. *Fielding v. Mott*, (1886) 14 S. C. R. 254.

Held, affirming the judgment of the Court below, that where a mining lease is obtained over private lands in Nova Scotia the lessees must obtain from the owners of the land permission to enter either by special agreement or in accordance with the provisions of "The Mining Act," R. S. N. S. (4th series) c. 9. Mining leases may be granted in all districts, whether proclaimed or unproclaimed. A mining lease is not invalid because it includes a greater number of areas than is provided by the statute, such provision being only directory to the commissioner. The issue of a lease cures any irregularity in the application for a license or in the license itself, in the absence of fraud on the part of the lessee.

Sir W. Ritchie, C.J. (255): I think the judgment of the S. C. of N. S. as delivered by Thompson, J., in this case, conclusive against the appellants. . . . I do not think I can with advantage add anything to what has been so forcibly and conclusively put forward by Mr. Justice Thompson in delivering the judgment in the Court below, (1885) (6 Russ. & Geld. 339); *Fielding v. Mott*, (1887) 14 S. C. R. 254.

20. When the holder of a lease of areas on private lands cannot make an agreement with the owner thereof for leave to enter and for easements, and for damage to such lands, and for the other purposes mentioned in section 22 of this chapter, it shall be lawful for such holder to give notice to the owner or tenant to appoint an arbitrator to act with another arbitrator named by the lessee of the areas, in order to award the amount of damages to which the owner or tenant shall be entitled, by reason of the opening and working of a mine in such lands, and the doing the acts or things contemplated by this section and said section; and if any lessee shall enter and work upon the land leased before he shall have agreed with the owner of the land, or have his damages appraised in accordance with this section, he shall be liable to the owner for trespass as in ordinary cases.

In *The Town of Stellarton v. The Acadia Coal Company*, decided by Mr. Justice Graham on the 20th December, 1897, the facts alleged were that the plaintiff was a body corporate, and the owner in fee and occupant of the streets and lanes within the corporate limits of the said Town, including the lands and premises therein described; that the defendant company was a body corporate, incorporated by chapter 64 of the Acts of the Legislature of Nova Scotia for the year 1865; that by chapter 162 of the Acts of said Legislature for the year 1886, all the property of every nature and description of the Halifax Company, Limited, and the Vale Coal, Iron and Manufacturing Company, including the leases held under chapter 7 of the Revised Statutes of Nova Scotia, 5th series, to certain coal mining areas covering and including within their limits the property hereinafter described, became vested in the defendant company, and the defendant company thereby derived its title to said leases from the said Halifax Company, Limited, and the defendant company has since held, renewed, and obtained, and now holds the said coal mining leases covering the said limits, under said chapter, and under chapter 1 of the Acts of the Legislature of Nova Scotia for the year 1892; that by reason of the works of the parties holding said mining leases, and of those under them, the plaintiff, in the years 1895 and 1896, while the defendant company held said leases as aforesaid, suffered damage by reason of the falling in and subsidence of the lands described as follows:—Beginning on the northern margin of the road leading from Stellarton past the McGregor slope, to the Westville road at a point 65 feet in a south-westerly direction from the south-east corner of the most eastern house of the Foster Pit Row; thence westerly along the margin of the said road 420 feet; thence southerly 50 feet; thence easterly along the southern margin of said road 420 feet, and thence northerly 50 feet to the place of beginning, which subsidence was caused by the works and excavations of the parties holding said leases, and while said damage was sustained subsequent to any agreement for or award of damages required by said chapter 7 or chapter 1, or any Acts in amendment thereof, whereby an action accrued to the plaintiff against the defendant company. The defendant denied that the plaintiff corporation is the owner in fee, or at all, of the lands

described in the claim; that the plaintiff was the occupant of the lands described in the claim, and said that any occupation of said lands by the plaintiff was by leave and license of the defendant; that the lands were the lands and premises of the defendant Company; that the leases held by defendant Company were held immediately from the Queen, represented in that behalf by the Commissioner of Mines and Public Works for the Province of Nova Scotia, and not from the Halifax Company, Limited, and denied that the falling in or subsidence of the lands described in the claim, or any part thereof, was caused by any of its acts or workings, or from the acts or workings of the Halifax Company, Limited, or any person or corporation from whom the company derived its title to said leases, and denied that the subsidence was caused by or from the workings of any person or corporation, and said that at the time said excavations were made, the person or corporation making the same was the owner in fee of the lands described in the claim; that the said excavations were made by the leave and license of the owner in fee of the lands; and that the plaintiff's claim, if any, was barred by chapter 112 of the Revised Statutes of Nova Scotia, 5th series.

The judgment of Mr. Justice Graham was as follows:—

"I have no difficulty in finding as a fact that the subsidence of the land (a portion of the street in the Town of Stellarton) was caused by the excavation beneath in working the mine of which the defendants are the present lessees.

There is evidence that the General Mining Association, predecessors in title of the defendants, worked in that locality. Then there is the fact of the subsidence which would be unaccountable in this country unless it was due to human agency. Besides, the facts are peculiarly within the knowledge of the defendants, and it was very easy for them to show by the plans of the underground working that Lannon was mistaken if that was the case.

I also find that this street was formerly a public road, and according to our law the fee was divested from the original private owner.

But the last work of excavation proved was in 1870, long before the defendants had acquired the title, and although the subsidence took place since and during the currency, there is no liability. The case is, I think, within the decision in *Greenwell v. Low Beechburn Coal Co.* (1897) 2 Q. B. 165.

The plaintiffs, however, rely upon sections in the Mines Acts, namely, section 20, made applicable to coal mines by section 105, section 20 and following sections relate to compensation to the owners of surface property to be made by the mine owner in connection with the opening and working of the mine.

1.—In my opinion the common law liability is not extended by reason of anything in those provisions. Before this (1892) the penalty upon the mine owner for entering and working before making an agreement with the surface property owner, or arbitrating in respect to the damages, was a liability to have the lease forfeited by the Supreme Court on an application of the person complaining. R. S. c. 7, s. 18.

Perhaps that was considered too drastic. At any rate there was an amendment, and the penalty now is, that he shall be liable to the owner for trespass as in ordinary cases—that is, the owner shall have his common law remedy. The Legislature may have thought that this mode of amendment would be clearer than simply to repeal the provisions about the liability to have the lease forfeited.

2.—Subsidence is all that the plaintiffs can complain of in regard to their land, and is all the defendants can be connected with.

I think that this would not come within the scope of the arbitrator's powers under the sections in question. They are comprehensive, no doubt, as will appear by *Palgrave v. McMillan*, (1892) A. C. 460, but as was said by Bruce, J., in *Greenwell v. Low Beechburn Coal Co.*: 'When I find that the powers granted do include a great many things which, apart from subsidence will necessarily damage the surface, I think I may adopt the language of Lord Blackburn, in *Davis v. Trehaen*, and say that the reasonable conclusion is that the compensation is intended to apply to damage caused by things done in the exercise of those rights.'

If that is so, the defendant was not obliged to agree, or to arbitrate with the plaintiffs; the section did not apply, and the plaintiffs are left to their common law remedy, and in consequence of *Greenwell v. Low Beechburn Coal Co.*, they have none.

The action will be dismissed, and with costs."

21. The notice mentioned in the last preceding section shall, when practicable, be personally served on such owner or his agent, if known, or tenant; and after reasonable efforts have been made to effect personal service without success, then such notice shall be served by leaving it at the last place of abode of the owner, agent or tenant. Such notice shall be served, if the owner resides in the county in which the land is situate, ten days, if out of the county, twenty days. If the proprietor refuses, declines or omits to appoint an arbitrator, or when for any other reason no arbitrator is appointed by the proprietor in the time limited therefor in the notice provided for in the next preceding section, the warden of the municipality wherein the lands lie, shall, on being satisfied by affidavit that such notice has come to the knowledge of such owner, agent or tenant, or that such owner, agent, or tenant wilfully evades the service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, and that the notice was left at the last place of abode of such owner, agent, or tenant, appoint an arbitrator on his behalf.

Where the warden of the municipality had under R. S. N. S. (5th series) c. 7, s. 19, appointed an arbitrator on behalf of the respondents to estimate damages to be paid to him by the appellants under the statute, and it appeared that the respondent had received and neglected a notice under section 18, to appoint, it was held that such appointment was not a judicial act, and that a fresh notice to the respondent in relation

thereto was not a condition precedent to its validity. Where an award gave to a land owner a fixed sum as estimated damages for all works or occupation necessary to or required by the mining lessee it was decided, that having regard to the subject-matter and scope of the Act, such award was not bad for uncertainty. *Palgrave Gold Mining Company v. McMillan*, (1892) App. Cas. 460.

22. All arbitrators appointed under the authority of this chapter shall be sworn to the impartial discharge of the duties assigned to them; and they shall forthwith proceed to estimate the reasonable damages which the owners and tenants of such lands, according to their several interests therein, shall sustain by reason of the opening of necessary shafts and other excavations, the construction of roads and drains, the erection of necessary works and buildings thereon, and on the occupation of so much thereof (to be determined by the Inspector of Mines, in the event of any dispute arising in respect thereof), as the lessee may require for all purposes connected with the opening and working of a mine to the most advantage thereon, including therein all such spaces as may be necessary from time to time for a dumping ground or grounds, for depositing the mineral mined, as well as slate, stone, shale, screenings, waste coal, refuse, rubbish, and all other material mined or excavated by such lessee, and those claiming under him. In estimating such damages, the arbitrators shall determine the value of the land irrespectively of any enhancement thereof from the existence of gold or other mineral ores or metallic substances therein. In case such arbitrators cannot agree, they may select a third arbitrator; and when the two arbitrators cannot agree upon a third arbitrator, the warden of the municipality in which the lands lie shall select such third arbitrator. The award of any two of such arbitrators, made in writing, shall be final.

23. When the person or persons entitled to such damages shall be unknown or uncertain, the lessee shall, by advertisement published in the *Royal Gazette* at Halifax, and in a newspaper, if any, published in the county where the lands lie, for at least thirty days, in which the lands shall be particularly described, call upon all persons having a right to such damages to appear before the warden of the municipality in which the lands lie on or before a certain day therein named, to be not less than thirty days after the first publication of such advertisement, to appoint an arbitrator; and if an arbitrator is not so appointed on or before such day, and notice of his appointment given to said lessee, the warden and lessee shall each appoint an arbitrator, and all further proceedings shall be in accordance with the provisions of this chapter; and the warden shall receive all moneys awarded in

such case, and pay the same over to the treasurer of the municipality, and when the right of the ownership of the land shall be in dispute, the payment for damages awarded shall in like manner be made to the warden, who shall pay the same to the treasurer of the municipality.

24. The payment of such damages by the party liable therefor to the persons designated by the award as entitled thereto, or, if the award shall not designate the persons entitled, to such persons as in the absence of any dispute shall be ostensibly entitled thereto, shall exonerate the party making payment; but any person subsequently claiming to have been entitled to the damages so paid may prosecute their claims by action for money had and received against the persons to whom the payment shall have been made. In case the award shall not designate to whom the money is to be paid, or in case the party designated shall decline to receive it, the party liable to the payment of the amount so awarded may exonerate himself from all further liability by paying the amount so awarded to the Prothonotary of the Supreme Court for the county. When such appraisal has taken place, such Prothonotary shall, upon receipt thereof, deposit the same, less a commission of one per cent. thereon, at interest in a Government savings bank, or in a chartered bank nearest to his office. Such Prothonotary shall not be entitled under any circumstances to make any charge beyond such commission.

25. In case of dispute or unknown title, the Supreme Court or a Judge thereof, on application of the claimant, shall order the damages paid to the treasurer of the municipality to be paid to the persons who, on due investigation by such court or judge, shall have established their right thereto, but no order shall be made until it shall be shown that notice has been given, sufficient in the judgment of the court or judge to protect the rights of all persons who may be or may claim to be interested.

26. The lessee or licensee shall not be implicated in controversies between persons contesting title to the damages. Upon payment of the amount of damages determined by the arbitrators, the lessee shall be entitled to the use of the lands so acquired during the term of his lease for the purposes specified in section 22 of this chapter, and at the end of said lease all rights of the lessee in such lands by virtue of such lease will cease.¹

¹ Under section 42 of N. S. R. S. (4th series), c. 9, a licensee has been held entitled to a lease; the statute contemplates the grant of both licenses and leases in all districts, whether proclaimed or unproclaimed; that the first applicant, whether for a license or a lease, is entitled; that

applications must be made in writing to the Commissioner or Deputy Commissioner; the statute does not annex any right to earlier discovery; the Commissioner is the creature of the statute, and has no jurisdiction given him to enforce equities entirely outside of the statutory proceedings; though it may be a breach of duty on the Commissioner's part to grant a license without the bond required by the 39th section, it does not follow that such a license is void. *Mott v. Lockhart*, (1883) L. R. 8 App. Cas. 568.

A license to search for minerals granted under chapter 9, R. S. (4th series), is assignable. In *re Milner's Appeal*, (1877) 11 N. S. R. 522; (1877) 2 R. & C. 522.

27. In no case in which the award shall find the amount of damages with sufficient certainty shall such award be set aside because the persons entitled to damages are not designated by name or sufficiently designated, or by reason of irregularity as to the persons entitled, or of any matter of form; but the Supreme Court or Judge shall rectify any error or informality, or shall adopt such proceedings as may be necessary for determining to whom the damages may be paid or for otherwise carrying into effect the provisions and intent of this chapter.

See notes to sec. 20.

28. The parties obtaining licenses and leases under this chapter, and those deriving title under them, shall be answerable for damages that may ensue from the falling in of land, or for other injury which may be sustained by the owners or tenants of such lands subsequent to the agreement for or award of damages required by the foregoing sections, by reason of the works of the parties holding licenses or leases, or of those under them. Where an agreement cannot be made with the owner of the land for any such subsequent damages, the holder of the leases, or the owners or tenants of such lands, may proceed to have them referred to arbitration in the manner provided and set forth in this and preceding sections with reference to the assessment of damages to lands and for entry.

29. All leases hereafter granted shall be for the term of forty years; but the holder of any lease may at any time surrender the same by notice in writing signed by him, and filed, together with his counterpart of lease, in the office of the Commissioner; but in case the counterpart of the lease has been lost or cannot be obtained, an affidavit to that effect made by the lessee shall be received in place of such counterpart; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease for or in respect of any act, matter or thing, for which at the date of such surrender he was liable under the terms of such lease.

30. Such leases may be forfeited on failure to pay the stipulated royalties other than those arising from gold, or gold and silver-bearing material, crushed or otherwise treated at a licensed mill, or to keep employed annually on the demised premises the number of days' labor hereinafter specified, or to comply with any other of the provisions and stipulations in the leases contained.

31. The holder of any mining lease shall not use any part of the lands so demised for any other purposes whatsoever, except such as shall be necessary for making roads, opening drains, erecting necessary works, buildings, and all other purposes connected with the opening and working such mines to the most advantage; and all necessary ways and watercourses over the demised premises, whether expressly reserved in such lease or not, shall be considered as reserved to the Crown, and in respect to the making, alteration and use thereof shall be subject to such orders and regulations as the Governor in Council may from time to time consider expedient; and all licensees and lessees and other persons employed about the mines on such demised premises, shall use the lands in such manner as will be the least injurious to the owners and occupants of such lands, or any other lands lying contiguous thereto.

32. There shall be employed each year on the demised premises a number of days' labor equivalent to 40 days for every number one area comprised therein. The year for this purpose shall be computed from the first day of January, April, July, or October, which shall first ensue after the date of the lease, unless the lease shall be dated on one of such days, in which case the year shall be computed from the date of the lease; but any lessee holding ten or more, but less than twenty areas of Class No. 1 in any gold district, shall not be required during the first year of his holding to keep employed more than three-fourths of the number of days' labor above required to be performed per area; in like manner, if holding twenty or more, but less than thirty of such areas in the same district, he shall be required to keep employed only one-half, and if holding thirty or more, only one-fourth, the above required number of days' labor during such first year.

33. Where a lessee shall have employed in any one year a part only of the amount of labor required to be performed by him annually on the premises demised to him in any one district, or under any one lease, the whole of the areas held by him in such district or under such lease shall not necessarily become forfeited therefor, but only a part of such demised premises, proportioned to the number of

days' labor which such lessee has failed to perform, shall become forfeited; and such lessee shall make selection of that part of the demised premises which he will retain. To avail himself of the provisions of this section, a lessee must make known his selection by notice in writing to the Commissioner, within ten days after the termination of the year for the non-performance of labor during which a portion of the premises demised to him becomes forfeited; and the areas selected by him to be retained shall, so far as possible, be in a compact block, and not detached from each other, and no number one area shall be divided in making such selection. Should any one lease contain areas thus retained and also areas which are forfeited, such lease shall be surrendered by the lessee, who shall receive a new lease of the areas so retained.

34. When from any cause whatever a leased mine shall become forfeited to the Crown under the proceedings hereinafter by this chapter directed, all the right, title and interest which the holder of such forfeited lease had therein immediately previous to such forfeiture become thereby vested in the Crown; but the lessee of any mine may during his lawful occupancy thereof, or within thirty days from the date of such forfeiture, take down and remove any houses, buildings, machines or other erections, built or placed by him thereon, notwithstanding that the same may be considered in law as attached to the freehold.

35. Any person occupying and staking off any areas, or taking possession of by staking off any areas, on lands not lying within any proclaimed gold district, not exceeding one hundred areas of Class No. 1, shall be entitled to a license or lease, as the case may be, in preference to any other applicant. Every such person shall be entitled to one week and thereafter to twenty-four hours' time for making his application for every fifteen miles distance of the mine so occupied and staked off, from the office of the Commissioner at Halifax, by the shortest mail route.

36. The Commissioner of Public Works and Mines may issue licenses to search for gold and silver, to be called "Prospecting Licenses," which shall be subject to the rules prescribed by this chapter.

¹The effect of the amendment of R. S. c. 7, s. 91, by the Acts of 1889, c. 23, s. 3, was to create a change in the system, by abolishing licenses to work and substituting therefor leases, enabling applicants to obtain licenses in the first instance without the preliminary license. *Attorney-General v. Reynolds*, (1895) 27 N. S. R. 184.

37. Any such license may include any area not exceeding one hundred areas of Class No. 1 in extent, so as the same shall be laid off in quadrilateral and rectangular figures, and shall not in length exceed double the breadth thereof.

38. Such license shall be in force for any period not exceeding twelve months from the date of the application therefor.

39. All applications for prospecting licenses shall define by metes and bounds with reasonable certainty the lands applied for, and shall be accompanied by a payment at the rate of fifty cents per area.

40. Before such license shall be issued the applicant shall enter into a bond with Her Majesty the Queen with two sureties to the satisfaction of the Commissioner, to recompense the proprietor of the soil, in the event of entry being made on private lands, for damage done to his lands, to make the returns at the expiration of the license, and to pay the royalties hereinafter required.

41. If the proprietor of private lands so entered upon shall seek damages, he shall before the end of three months after the expiration of the license make his claim in writing against the holder of such license, detailing the particulars and amount of claim; and if the claim is not adjusted by agreement between the parties within one month after notice thereof as aforesaid, either of said parties may give notice to the other to appoint an arbitrator to act with another arbitrator to be named by the party giving the notice. Such notice shall when practicable be personally served on the proprietor or holder, as the case may be, or his agent, or tenant; and after reasonable efforts have been made to effect personal service without success then such notice shall be served by leaving it at the last place of abode of the proprietor, holder, agent or tenant. Such notice shall be served, if the proprietor or holder resides in the county in which the land is situated, ten days, if out of the county, twenty days. If the proprietor or holder refuses, declines or omits to appoint an arbitrator, or when for any other reason no arbitrator is appointed by the proprietor or holder in the time limited therefor in the notice provided by this section, the warden of the municipality wherein the lands lie shall, on being satisfied by affidavit that such notice has come to the knowledge of such proprietor, holder, agent, or tenant or that such proprietor, holder, agent or tenant wilfully evades the service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, that the notice was left at the last place of abode of such

proprietor, holder, agent or tenant, appoint an arbitrator on his behalf.

42. All the provisions of sections 20, 21, 22, 23, 24, 25, 26 and 27, shall be applicable to and shall govern so far as practicable the proceedings of the arbitrators in the last section mentioned, and their award.

43. Within the period for which the license is granted, the party holding the same shall be entitled to select any area or areas comprised therein of the size and form described in this chapter; and shall be entitled to a lease of the areas selected upon the terms imposed herein.

44. No lease nor any prospecting license shall authorize entry upon any buildings or the curtilage appertaining to any house, store, barn or building, or upon any garden, orchard, or grounds reserved for ornament, or under cultivation by growing crops, or enclosed, except with the consent of the occupier, or by license from the Governor in Council authorizing such entry, to be granted on special application, setting forth the circumstances under which the same is applied for, and on such terms as the Governor in Council may impose.

45. On all leases of gold, and gold and silver mines, and prospecting licenses to search for gold, there shall be reserved a royalty of two per cent. upon the gross amount of gold and silver mined.

LICENSED MILLS.

46. The Commissioner may issue a license to any person or persons (to be called "licensed mill owners") to run or use any mill or machinery (to be called a "licensed mill"), for the purpose of the reduction or concentration of quartz or other gold or gold and silver bearing material, or the obtaining of the gold and silver therefrom by crushing, stamping, amalgamating or otherwise, and to retain out of such gold and silver a sufficient amount to pay the royalties prescribed by this chapter, and no person or persons shall run or use such mill or machinery without such license therefor first had and obtained, except in the case of mills or machinery worked by hand.

47. Before any such license shall be granted, the party applying therefor shall enter into a bond to Her Majesty in the penalty of two thousand dollars, to comply with the requirements of this chapter in respect to licensed mill owners.

48. Every licensed mill owner shall keep on the demised premises a book or books of account, to be supplied by the Commissioner, which shall at all times be open to the inspection and examination of the Commissioner, or the Deputy, or the Inspector of Mines, or any other person thereto authorized by the Commissioner, in which book or books shall be entered a clear and distinct statement of all quartz or other material reduced, concentrated, crushed, stamped or amalgamated at such licensed mill, and the following particulars in respect of the same:—

I. The name of the owner or owners of each distinct parcel or lot of quartz, or other material crushed.

II. The weight of each such parcel or lot.

III. The date of the crushing of the same.

IV. The actual yield in weight of gold or gold and silver from each such parcel or lot.

V. The royalty thereon, calculated at two per cent.

VI. The number of the lease of the mine or area (so far as the same is known or can be ascertained) from which each such parcel or lot was raised, and if he fail to keep such book or books of account his license shall be revoked.

49. Each licensed mill owner shall pay or cause to be paid, in money, in weekly or other payments, as the Commissioner shall order, to the Commissioner or to the Deputy Commissioner for the district, a royalty of two per cent. on the gross amount of gold obtained by amalgamation or otherwise in the mill of such licensed mill owner, at the rate of nineteen dollars an ounce troy for smelted gold, and eighteen dollars an ounce troy for unsmelted gold, and of two per cent. on the silver, at the rate of one dollar per ounce troy.

50. In case any licensed mill owner shall fail to pay such royalty in the mode and at the time prescribed by or in accordance with this chapter, he shall be liable to an action at the suit of the Commissioner as for money had and received to the use of such Commissioner; and such action may be brought according to the amount of the claim, in the same court which would have jurisdiction in case the amount claimed were an ordinary private debt, and his license may be revoked.

51. Every licensed mill owner shall file in the office of the Deputy Commissioner for the district, on the first day of the month, or if there be no Deputy Commissioner for the district, then in the

office of the Commissioner on or before the tenth day of each month, a return, being a copy of the entries in such book or books of account for the last preceding month, as prescribed by the forty-ninth section of this chapter, which return shall be verified by the affidavit of the person principally employed in keeping such account, and on failure to make such return or to verify the same as aforesaid, the license of any mill owner may be revoked.

52. If during any month no quartz or other material be reduced, concentrated, crushed, stamped, or amalgamated on such premises, the mill owner shall make a return to that effect, which return shall be verified by the affidavit of the owner or of the person in charge of the premises, and on failure to make such return or to verify the same as aforesaid, the license of any mill owner may be revoked.

53. Any owner or part owner of any mill or machinery for the crushing or reduction of quartz, or for the obtaining of gold or silver and silver therefrom (other than mills or machinery worked by hand) which shall be engaged, used or employed for the crushing or reduction of quartz or other gold or gold and silver bearing material or the obtaining of gold or silver therefrom, without a license therefor first had and obtained as prescribed by this chapter, and any person engaged as agent, servant, workman, clerk or otherwise, in any such mill, shall forfeit and pay the sum of four hundred dollars for each such offence, and for every day in which such offence shall be committed the same shall be considered a new offence.

54. When the account books prescribed by this chapter, or any of the accounts hereby required, shall be fraudulently or falsely kept, or the affidavits hereby prescribed or any of them shall be false or fraudulent, the license to the mill in respect of which the offence has been committed may be revoked, and the "licensed mill owner" shall be liable for each offence to a penalty of not more than two thousand dollars, to be recovered in the Supreme Court in the name of the Commissioner.

55. In case a "licensed mill owner" is not the owner of the mill or machinery so licensed, the owner thereof may apply to the Commissioner to have said license revoked; and upon proof having first been given that the "licensed mill owner" has received fourteen days' notice that such application would be made, with the date thereof, and that the applicant is the legal owner of said mill and machinery, said license may be revoked.

56. The Commissioner shall have authority to enquire into any alleged violation of the sections whereby such mill license may be revoked, and if in his judgment such violation has been committed he may revoke the same, but his judgment shall be subject on appeal to the revision of a Judge at Chambers, who shall make such order in respect to the same as shall be agreeable to law and justice, and if he think fit may order any question of fact to be tried by a jury.

57. Every licensed mill owner who shall in all respects have complied with this chapter shall be entitled to receive from the Commissioner at the end or expiration of every three months from the date of his license, a sum equal to five per cent. upon the amount paid over by him as royalty during such period; but no such percentage shall be paid in the case of free leases.

58. A licensed mill owner may at any time surrender his license by delivering the same into the office of the Commissioner with a written surrender endorsed thereon, but no such surrender shall take effect till after the lapse of ten days from the filing at the office of the Commissioner of a notice in writing of the intention of such mill owner to surrender the same.

59. Upon such surrender taking effect as aforesaid such mill shall cease to be a "licensed mill" until again licensed under the provisions of this chapter. The death of a licensed mill owner shall terminate the license, except that his executors or administrators shall be bound to close up the outstanding business with the department, and the Commissioner may grant a license to any other applicant after such death.

60. The licensed mill owner so surrendering his license and his sureties shall remain liable under their bond for all obligations accruing thereunder up to the time when the surrender takes effect as aforesaid, but shall not be liable for obligations accruing thereafter.

REQUIREMENTS OF LESSEES AND LICENSEES.

61. Lessees of mines shall be bound to make to the office of the Commissioner or to the Deputy Commissioner for the district, within ten days after the first days of January, April, July and October in each year, true and correct returns to the best of their knowledge and belief, on forms to be supplied by the Commissioner, in which shall be comprised the following particulars:

I. The number of days' labor performed on the demised premises during the preceding quarter.

II. The number of tons of quartz or other gold or gold and silver bearing material raised from the demised premises during the preceding year.

III. The person or persons to whom the same has been sold or disposed of, and the different lots or parcels in which the same has been sold or disposed of, with dates.

IV. The weight of all quartz or other gold or gold and silver bearing material sent by him during the quarter to any licensed mill, and the name and description of the mill to which the same has been sent, and, when the same has been sent and kept in distinct parcels, the weight of each separate parcel.

V. The yield of each separate parcel or lot, as returned and allotted by the mill owner, with the date of allotment.

VI. The total quantity of gold or silver obtained from the mine in any manner during the quarter, distinguishing that resulting from the quartz or other gold or gold and silver bearing material crushed at licensed mills, from the gold or gold and silver otherwise obtained. Such returns shall be verified by affidavits, to be made before the Commissioner, or one of the Deputies, or a Justice of the Peace.

62. The lessee and licensee of each mine shall be liable for royalty upon all gold or gold and silver obtained from his mine in any other way than from quartz or other gold or gold and silver bearing material crushed by licensed mills; but he shall be exempt from any claim in respect of gold or gold and silver obtained from quartz or other gold or gold and silver bearing material so crushed, the liability of the mill owner for such royalty being substituted for that of the lessee.

63. When any parcel of quartz or other gold or gold and silver bearing material from a free mine shall have been crushed at a licensed mill, the owner of the quartz or other gold or gold and silver bearing material, on proof of the facts to the satisfaction of the Commissioner, shall be entitled to receive from the Commissioner the amount deducted by the licensed mill owner and paid as royalty under the provisions of this chapter.

64. In case any holder of a lease granted under this chapter shall fail to make payment of any royalty accruing under the terms

of section 62 of this chapter, within ten days after the time prescribed by this chapter for making his return to the Commissioner or the Deputy Commissioner for the District, he shall be liable to an action at the suit of the Commissioner of Mines, as for money had and received to his use for the value of the royalty so accruing.

65. Such action may be brought, according to the amount claimed, before the same court which would have jurisdiction in case the amount claimed were an ordinary private debt; and on a change of Commissioner, actions prosecuted by him shall be continued and prosecuted by his successor in such manner as the court shall direct; and a Commissioner may prosecute in his own name as for money had and received to his use, although the same may become due to a previous Commissioner.

66. In any case of liability to forfeiture of any gold or gold and silver mining lease for non-compliance by the lessee with the terms, stipulations, and conditions therein contained or by this chapter required, the Commissioner shall cause a notice in the form in schedule E to be personally served upon the lessee (or some or one of the lessees, where more than one are included in the lease), or his agent or person principally employed on the premises, or shall cause such notice to be posted upon the premises leased where no person can be found in the gold district where such premises lie, or (in case the leased premises are not within a proclaimed gold district) in the polling district in which such premises are situated, upon whom to make service thereof, informing him of such charge, and appointing a time (not less than thirty days after the service or posting of such notice) and place for the investigation of the same; and a duplicate of such notice shall also be posted up in the office of the Commissioner, for at least thirty days next previous to the time so appointed; and such duplicate shall be kept so posted for at least thirty days after the investigation and decision of the case, with the decision and the date of such decision briefly noted thereon.¹

¹ In the *Attorney-General v. Temple*, (1896) 29 N. S. R. 288, the forfeiture under provisions of s.-s. a of sec. 18 of this Act as amended May 21st, 1894, by the Commissioner of Mines of a lease, dated 10th June, 1889, of gold areas in Montague district, "for the term of 21 years, to commence and be completed from the 21st day of May, 1889," was held bad by Townshend, J., at the trial, because (1) it was made *ex parte* and without the usual proceeding and adjudication of forfeiture (under the general provisions, 1892, ss. 66-69); (2) the money (rent) tendered was in time, and (3) that the language of the statute, viz., "the date of the lease" means the date of the document, and not the commencement

of the term fixed in the lease. On appeal the judgment was sustained by Ritchie, J., "only on the ground that the rent was not in arrears." Graham, E.J., and Meagher, J., (doubting), but following Attorney-General v. Sheraton, (1895) 28 N. S. R. 492, which, he said, "governs this case in one particular, and I yield to its authority."

Graham, E.J., said, p. 292: "I agree with him (Townshend, J.) that there should have been forfeiture proceedings and a judgment of forfeiture under the general provisions, 1892, ss. 66-69, and that under the proper construction of the provisions relating to rental applicable to the case of this lease, there was not to be an *ipso facto* forfeiture."

"There have been changes in the Acts which were applicable to the case of Attorney-General v. Sheraton, (1895) 28 N. S. R. 492. At any rate there is now an addition, which was not applicable in that case, made by the Act of 1890, c. 19, s. 2.

Page 299: "I am not impressed, however, with the idea now advanced that a recital in the rental agreement which identifies the lease by number, and also by the date, which, under the assumption, is an erroneous date, constitutes an estoppel. I think it is merely a case of false demonstration. Moreover, the duplicate lease is also a public document in the office, publishing its correct date as forcibly as the rental agreement misrepresents it. And I do not think that the defendants can set up this estoppel, if it is supposed to exist, between the commissioner and the relator; or if it is relied on as an estoppel against the commissioner, that the Crown or public is estopped by his mistakes under this public Act."

On the question of the right of the defendants (licensees from the Crown of the alleged forfeited areas) to attack the plaintiff's lease, on the ground that the term was 21 years instead of 20, as it was contended it should have been to comply with the statute, Graham, E.J., (p. 300), decided that "the defendant cannot raise the question. Osborne v. Morgan, (1888) 13 App. Cas. 227, is in point. Queen v. Hughes, (1865) L. R. 1 P. C. 81, and Reg. v. Clarke, (1851) 7 Moo. P. C. 77, were cases in which the Crown had instituted proceedings directly to annul the grant on the ground that the statutory officer had violated the Act and granted an excessive area. Osborne v. Morgan is a case in which, as here, the subject was treating it as void, and was attacking it in a collateral proceeding with a subject. This was also the case in Fielding v. Mott, (1885) 18 N. S. R. 347; (1886) 14 S. C. R. 254."

This decision was affirmed, (1897) 27 S. C. R. 355.

See note to s. 1, Acts of 1897, c. 4; In re Weir.

67. At the time and place appointed the Commissioner shall proceed to investigate such case, and the service or posting of the notice shall be proved, either orally at the investigation or by affidavit sworn before a Justice of the Peace or a Commissioner of the Supreme Court. Upon proof of such notice and upon hearing the evidence relating to the case, which shall be taken in writing and signed by the witnesses, the Commissioner, on being satisfied of the

non-fulfilment of the conditions of the lease or of the provisions of this chapter, shall give judgment forfeiting the lease and revesting the premises in the Crown; and such judgment shall be in the form of Schedule F, and shall be signed by the Commissioner.¹

¹ See *Attorney-General v. Temple*, (1897) 27 S. C. R. 355, referred to in notes to section 66; also note to s. 1 Acts of 1897, c. 4; In re *Weir*.

68. From the judgment of the Commissioner the party interested may appeal to a Judge at Chambers, provided that notice of such appeal be given to the Commissioner within thirty days from the date of his decision; provided also that the party appealing shall, on applying for such appeal, make and file with the Commissioner an affidavit that he is dissatisfied with such judgment, and that he verily believes the lease has not been forfeited, and that the conditions in respect of which the forfeiture has been declared have really and truly been performed and fulfilled, and shall, within the time limited for appeal enter into a bond to Her Majesty the Queen with two sufficient sureties in the penalty of fifty dollars to enter and prosecute his appeal according to the provisions hereof, and pay all costs which may be adjudged against him by the Court of Appeal.

69. On such appeal being perfected the Commissioner shall transmit to the Prothonotary at Halifax the notes of testimony taken before him, and all exhibits put in evidence.

70. Applications, transfers or other original papers in the Mines office, or any appeal under this chapter, shall not be transmitted unless the Commissioner so orders, but copies thereof, to be prepared at the expense of the party appealing and certified by the Commissioner or Deputy, shall be transmitted instead of the originals. Provided that the judge hearing the case may grant an order requiring some officer of the department to attend with the original applications, transfers, and other papers for the purpose of inspection.

71. The Judge at Chambers shall confirm or set aside the judgment, or make such order thereon as is agreeable to justice and in conformity with law.

72. If a judge shall consider that the case involves questions of controverted fact on which he is of opinion that the verdict of a jury should pass, he may make an order for the trial of the questions of fact in the county where the land lies, in which case all the papers shall be transmitted to the Prothonotary of that county, and the cause shall come on for trial in its place in the same way as ordinary jury causes.

73. Upon the finding of a jury on the fact, the Judge shall pronounce judgment on the whole case. So soon as judgment declaring forfeiture of the lease shall be given, either by the Commissioner without appeal or by the Court of Appeal when the Commissioner's judgment is appealed from, the lessee and all persons holding under him shall thereafter cease to have any interest in the mine leased, and a minute of the judgment declaring forfeiture shall be registered in the office of the Commissioner on the expiration of the time limited for appeal in the same manner as prescribed by this chapter for leases and transfers; and the leased premises shall then be open to be leased to any other applicant in the same way as if no lease thereof had ever passed, and pending the proceedings between the delivery of the first judgment and any subsequent judgment on appeal therefrom such lessee shall suspend all mining operations on the area alleged to be forfeited, otherwise he may at the discretion of the Commissioner be liable to be treated as a trespasser as hereinafter directed.

74. The Commissioner shall have power to declare forfeited all leases granted for mining gold or silver that are liable to forfeiture that have not been worked or have only been colorably worked for the space of five years next preceding, notice of such intended declaration first having been given to the lessee or lessees for at least three weeks, such notice to be served personally or forwarded by registered letter to the post office address of such lessee or lessees, said notice to state the names of the lessees, the number of the leases, and the date at which such declaration will be made.

75. On the day so named in such notice the Commissioner shall hear any party interested in any such lease, and his judgment shall be final, unless appealed from within thirty days thereafter, such appeal to be made and perfected as provided in section 68 of this chapter.

76. No application for leases or prospecting licenses for forfeited areas shall be received until the time limited for appeal has expired, or all appeals are finally determined.

77. Whenever after investigation by the Commissioner he is unable to decide who was the first applicant for a prospecting license or lease of gold areas or gold and silver areas, or who was the first applicant for license to search for mines, other than gold or silver, or for lease of such mines, the said Commissioner may, after notice to be given in such manner and for such length of time as may seem to him to be proper, cause the right to such prospecting

license or lease, or license to search or lease, to be sold, offered for sale at an auction to the conflicting applicants in whole or in part as he shall deem best for the public interest, and the applicant who offers and pays the highest premium above the price fixed by law shall be entitled to be considered the first applicant for such prospecting license or lease for gold or gold and silver, or license to search or lease of minerals other than gold or gold and silver, provided that in case such conflicting applicant or applicants do not offer any premium above the price fixed by law, the Commissioner may offer the prospecting license, license to search, lease for gold or gold and silver, or for minerals other than gold or gold and silver, so applied for, at public auction, in such manner as he may think fit.

UNLAWFUL ENTRY AND WORKING.

78. The Commissioner of Mines shall have power by warrant under his hand and seal, addressed to the sheriff or a constable of the county wherein the gold district lies, to cause any person unlawfully in possession of a mine so judged to be forfeited to be removed from the possession and occupation thereof; and upon receipt of such warrant the sheriff or constable to whom it is directed shall immediately execute the same.

79. Any person found mining gold or gold and silver, or any mineral other than gold or gold and silver, in any land belonging to the Crown or to a private proprietor, the minerals in which belong to the Crown or have been leased or licensed to any licensee, lessee or corporation for the purpose of mining, shall be liable to a penalty for each offence of not less than ten dollars nor more than fifty dollars; but this section shall not extend to parties prospecting or searching for mines.¹

¹ Where plaintiffs had brought an action against defendants for an alleged trespass on their mine, and it appeared that the mine was within the limits of a lot assigned to the party, under whom plaintiffs claimed, on a survey attended by all the parties then interested; that the lot had been occupied from that time by the plaintiffs and those under whom they claimed, by consent of the proprietor of an adjoining lot, under whom the defendants claimed; and that no interruption of that occupation has been attempted for a period of nine years, or until defendants interposed, the Court refused to dissolve an injunction which had been granted on *ex parte* affidavits, on behalf of the plaintiffs, to restrain the defendants from working or interfering with the mine. *Hamilton v. Brown*, (1866) 6 N. S. R. 260; 2 Old. 260.

80. The Inspector or his Deputy, or any person appointed by the Inspector, is hereby authorized to enter on any person's property and premises where he may believe or be informed that such mining of coal or other mineral is being carried on, and make search over such property and premises, and if it be found that such mining referred to in this section has been carried on, it shall be deemed *prima facie* evidence of the guilt of the proprietor or tenant of such property or premises, and the party found guilty shall be compelled to fill up any slope or pit made for the purpose of such mining at his own expense, and to make good any further damages caused by such mining, within a time to be named by the court referred to in section 82 of this chapter. If the party found guilty does not, within the time so named, fill up such pit or slope, and make good such other damage, he shall be considered guilty of a distinct offence under this section for every day thereafter. This section and sections 81, 82, 83, 84 and 85 of this chapter shall apply to mines other than gold or gold and silver, as well as to mines of gold and gold and silver.

81. Parties violating the provisions of the preceding sections 79 and 80, shall be considered guilty of a distinct offence for every day they shall unlawfully mine.

82. On complaint in writing made to any Justice of the Peace of the county in respect of such unlawful mining or entry to mine, the justice shall issue his warrant to apprehend the offender and bring him before such justice or any other justice to answer the complaint; such justice shall thereupon forthwith enter upon the investigation of the complaint; and in case he shall find the party guilty, impose such fines or penalties as the party may have incurred under the provisions of this chapter. In case the defendant requires time for the production of witnesses for the defence the justice shall adjourn the investigation for any period not exceeding six days, on being satisfied by affidavit that such time is required for that purpose; and in such case the defendant shall be committed to goal, unless he gives security to the satisfaction of the justice to appear at the time and place appointed for such adjourned investigation.

83. The decision of such justice shall be subject to appeal to the Supreme Court or a Judge thereof; but before such appeal shall be allowed, the appellant shall give a bond with sufficient sureties in double the amount of the penalties and costs, to appear in the Supreme Court and obey the judgment thereof, and pay such costs as the Court may award.

84. Gold or gold and silver in quartz or otherwise unlawfully mined on the property of any lessee of the Crown shall be considered in law the personal property of the owner of the mine; and a search warrant may be issued for the same by any Justice of the Peace for the county in the same manner as for stolen goods; and upon the recovery of any gold or gold and silver under such warrant, the justice shall make such order for the restoration thereof to the proper owner as he shall consider right.

85. Nothing in this chapter contained shall prevent Her Majesty from having or using any other remedy now available to recover possession of any mine forfeited from causes cognizable before the Commissioner of Mines, or from any other causes from which the same may be liable to forfeiture.

86. No lessee shall mine within ten feet of the boundary line of property held by him under lease, but he shall leave a barrier of unwrought strata of at least ten feet in thickness between his workings and his boundary; and no opening shall be made in this barrier without the consent in writing of the lessee of the adjoining land or areas; and the party injured by such unlawful mining shall have an action at law, in addition to the penalty, against the offender for all damages incurred by or consequent upon such unlawful working or mining. Provided however that if the lessee shall deem the above restriction to be a hardship he may apply to the Commissioner to have the case examined by the Inspector of Mines, and the Commissioner, upon receiving the report of the Inspector in such case, shall have it in his discretion to release the lessee from the foregoing restriction.

87. Any party aggrieved by a decision of the Commissioner of Mines respecting any application for a prospecting license, or a lease of a gold area or gold and silver area, or a license to search, or lease of any area other than a gold or gold and silver area, may appeal from such decision to the Supreme Court *in banco*.¹

¹ W. H. made application for a lease of certain gold mining areas, which was opposed, and a contestation took place before the Commissioner of Mines as to the rights of the contending applicants. Pending the contest and before the decision, W. H. died. The decision being against the deceased, his widow, who was appointed sole executrix, gave notice under the statute of her intention to appeal, and made an affidavit embodying the requirements of the statute, and filed the bond required. The affidavit was made in Toronto before a notary public for the Province of Ontario, and it was held that the affidavit was not made in accordance with the requirements of the statute, and that the appeal

must be set aside for irregularity. Construction of the 5th R. S. c. 107, s. 5. *Re Hedley*, (1886) 20 N. S. R. 130; (1887) 8 R. & G. 130; (1888) 8 C. L. T. 376.

One of several applicants for a mining area produced evidence at the hearing before the Commissioner of Mines to prove that he was the first applicant. In the course of the investigation, a witness against the appellant was examined, and while he was being cross-examined on a subject of importance to the inquiry, his cross-examination was stopped by the Commissioner. It was held that this was sufficient ground on which to sustain an appeal, and that the appellant was the party aggrieved; the case differing from *In re Spelman* in that there the applications were simultaneous. (Per Rigby, J.) Costs do not follow, as a matter of course, in such cases, but should be given in such a case as the present. (Per Weatherbee, J.) Costs of appeal follow, as a matter of course. *In re appeal Stephen Sweet*, (1882) 15 N. S. R. 397; (1882) 3 R. & G. 397.

88. Any party desiring to appeal from such decision shall give notice in writing to the Commissioner of his intention to appeal within twenty days after such decision, or within twenty days after such decision being made known to the party dissatisfied therewith, but always within one year from the date of such decision, and shall make and file with such notice an affidavit that he is dissatisfied with such judgment or decision, and that he verily believes he is entitled to the license or lease applied for, and shall also set forth therein the grounds of his appeal, and shall within ten days thereafter enter into a bond to Her Majesty the Queen with two sureties in the penalty of two hundred dollars to enter and prosecute his appeal and pay all costs which may be adjudged against him by the Court of Appeal; and thereupon the Commissioner shall file such notice and affidavit, together with all papers and documents connected with such appeal, with the Prothonotary at Halifax on or before the first day of such term.

89. Order LVII., Rules 2 and 9, and Order LVIII., Rules 5, 6 and 7, of chapter 104 of the Revised Statutes, fifth series, shall apply to every such appeal.

90. The provisions of the foregoing sections from nine to eighty-nine, both included, shall apply exclusively to gold and to gold and silver mines, except where any of such sections are expressly mentioned to apply to mines other than gold and gold and silver mines, or where the provisions of such sections are extended to mines other than gold and gold and silver by the subsequent sections of this chapter.

OF MINES OTHER THAN GOLD MINES.

91. The Commissioner may upon application grant license to search, to be in force for one year and six months from the date of application therefor. Any such license shall entitle the holder to enter upon any land covered thereby, and dig and explore for such minerals therein, other than gold or gold and silver, as the Crown holds for the benefit of the Province of Nova Scotia, that is to say, for tin, lead, copper, coal, iron and precious stones, and any other minerals hereafter reserved by the Legislature of this Province.¹

¹ A license to search for minerals granted under chapter 9, R. S. (4th series), is assignable.

In re Milner's appeal, (1877) 11 N. S. R. 522; (1877) 2 R. & C. 522.

92. No application for a license to search shall be valid or of any effect unless made in writing, and accompanied by a payment of thirty dollars. This section shall also apply to applications for licenses to search, called second rights.

93. Before the Commissioner shall grant a license to search, he shall require and receive from the applicant for such license a bond in the penal sum of eight hundred dollars, with sufficient sureties to the satisfaction of the Commissioner, conditioned that in the event of entry being made upon private lands, recompense shall be made for damages in the manner hereinafter provided.

94. A license to search may cover any single tract of ground not exceeding five square miles in extent, and not exceeding two and one half miles in length.

95. No license to search or lease shall be granted over land for which a license to search or a lease has already been applied for or granted, save as hereinafter provided.¹

¹ See *Re Caldwell*, (1896) 28 N. S. R. 240, *infra*.

96. Upon application for a license to search being made, the Commissioner, where necessary, shall cause the lands applied for to be surveyed and laid off, and a full description thereof shall be embodied in the license to search, but no such license shall authorize entry upon any lands which, in accordance with section 44 of this chapter, are forbidden to be entered upon, except as in that section provided.¹

¹ The application for a prospecting license over certain mining areas defined the locus: "Beginning at a stake marked W. M. L., standing about one mile westerly from Malega Lake, in the county of Queen's."

At the time the application was made there was no stake marked as described at the locality indicated, from which the description could start, but a stake marked as described was put down soon afterward.

Held, that the application was bad, as not accurately defining by metes and bounds, the lands applied for, within the meaning of "The Mines Act," 5th R. S. c. 7, s. 39.

Per McDonald, J.—That the reference in the statute to a description by metes and bounds, referred to metes and bounds existing at the time of the application.

Quære, per McDonald, C.J.—Whether the stake having been subsequently placed, the application, in the absence of fraud, was valueless as between the applicants and the Crown.

Re Malega Barrens, Ex parte McLeod, (1887) 20 N. S. R. 44; (1887) 8 R. & G. 44.

It has been held under section 15 and section 37 of "The Mines and Minerals Act," R. S. N. S. c. 7 (5th series), both regarded as imperative and not merely directory; that a description in an application for a prospecting license is sufficiently definite which describes the areas by numbers as designated on a plan in the office; the areas need not be collectively laid off in a quadrilateral figure, but the block of areas over which the license extends must consist of quadrilateral figures as defined in the statute. In re Ovens, (1891) 23 N. S. R. 376.

97. The cost of such survey shall be defrayed by the licensee, and the search for minerals under such license shall be made free of all expense to the Government; and the holder of the license shall within the time that the same shall be in force, and with all convenient speed, make a full and correct report of the result of his exploration to the Commissioner.

98. When a license to search for mines other than gold or silver and silver has been applied for or granted it shall be lawful for the Commissioner to receive applications for other licenses to search (called second rights) over the same tract.¹

¹ It was held in the case of an application for a license (second right) under this section before the expiry of a first license granted under R. S. c. 34, s. 7, and while it was in force, that the Commissioner could not, under the circumstances, grant the second right while the first right was in existence, and having done so, that the second right, which was improperly granted, and never valid or effective, and that the area in question upon the expiration of the first license was vacant, and open to any applicant therefor. *McColl v. Ross*, (1896) 28 N. S. R. 1.

99. On the expiration of the license to search granted upon the first application, or on the selection of an area for lease by the holder thereof, a license to search over such tract, or the remainder thereof, as the case may be, may be granted to the first of the applicants for

license to search (called second rights). Upon expiration of this license or selection of an area by the holder, the second of such applicants may be granted a license over such tract, or the remainder thereof, as the case may be, and so on until all such applications for areas in the tract have been exhausted.¹

¹ In re Caldwell, (1896) 28 N. S. R. 240, it was decided that the periods to be covered by the licenses or rights, subsequent to the first right, commence on the expiry of the preceding rights respectively.

A license to search for minerals, other than gold, was granted to the relators under section 86 of chapter 9, 4th R. S., to expire 21st May, 1874. Previous to its expiration, four other licenses, to search over the same area, were granted to the relators, which were to expire respectively 22nd May, 1875; 23rd May, 1876; 26th May, 1877, and 27th May, 1878; the area containing only four and a quarter square miles. On the 28th of May, 1877, defendants, having a license to search over an area overlying in part the area of the relators, applied for a license, which was afterwards granted, to work one square mile partially overlying and including within its boundaries the area under license to search to the relators. An order *nisi* having been taken to restrain defendants from interfering: Held, that over the area of four and a quarter miles first above referred to, not more than four valid licenses to search could be granted under R. S. c. 9, s. 91; that the relator's fifth license to search, which was to expire May 27th, 1878, was invalid, and that on the 28th of May, 1877, there was no obstacle to the defendants obtaining the license to work granted to them. *Obiter dictum*, that it was no objection to the license to work, that it was taken out in the name of one only of the defendants, Fraser, for their joint benefit, all the defendants having had an interest in the licenses to search, although taken out in the name of Fraser only. Attorney-General v. Fraser, (1878) R. E. D. 275. On appeal from the Judge in Equity to the Court in banco, held, that the practice of the office was wrong in granting more than one license to search, with right of renewal, to the same party over the same area; that on this ground the license to search relied on by relators was invalid, and that without respect to defendant's title, the injunction must be refused, but without costs, as both parties had acted under an erroneous view of the law. Attorney-General v. Fraser, (1878) 12 N. S. R. 351; (1878) 3 R. C. 351.

100. If the proprietor of private lands entered under such license shall seek damages, the proceedings for ascertaining the amount of such damages and making payment of the same, shall be the same as provided for by this chapter in the case of prospecting licenses for gold.

101. The holder of a license to search may at any time before the expiration thereof, select from the tract covered by such license, an area of which he may upon application to the Commissioner obtain a lease, for the purpose of mining any mineral he may name.

102. Upon such application being made, the Commissioner shall cause the portion so selected to be surveyed and laid off, and the applicant shall defray the expense of such survey, and the person making such survey shall make a full and accurate plan thereof, and transmit the same to the Commissioner.

103. Any person may apply for a lease without having previously obtained or applied for a license to search, and in such case his application shall embody a description of the area applied for.

104. Every application for a lease, whether made by the holder of a license to search or any other party, shall be made in writing to the Commissioner, and shall state the mineral for the purpose of mining which a lease is sought, and shall be accompanied by a payment of fifty dollars. An application failing to comply with each and all the requirements of this section shall be invalid and of no effect.

105. All the provisions herein contained relative to settlement by agreement or arbitration with the owner of the soil, where the same is private land, for damages done to his land, and to payment therefor as set forth in sections 20 to 27 inclusive, and to the occupation of such lands as set forth in section 31, and to the exemption of certain descriptions thereof from liability to be entered, as specified in section 44, and to the vesting of interests forfeited under this chapter, as specified in section 34, shall be applicable and in force in the case of mines other than gold or gold and silver mines, equally as in gold or gold and silver mines.

106. A lease for the purpose of mining coal or iron may cover any single tract of ground not exceeding one square mile in extent, and not exceeding two miles in length. For the purpose of mining copper or lead a lease may cover any single tract of ground not exceeding one half square mile in extent and one mile in length; and for the purpose of mining tin or precious stones may cover any single tract of ground not exceeding one quarter of a square mile in extent and one half mile in length.

107. Where a lease of a tract of land for the purpose of mining a particular mineral has been applied for or granted, the Commissioner may, at his discretion, and upon such further terms and conditions, not at variance with this chapter, as he may deem just and proper, issue licenses to search over the same tract, or any part thereof, for the purpose of mining other minerals, and may also receive

applications, and upon like terms and conditions [issue] ¹ leases of the same tract, or any part thereof, for the purpose of mining other minerals.

¹ See Acts of 1893, c. 3, s. 7.

LEASES.

108. Leases of mines other than gold mines, or gold and silver mines, granted under the provisions of this chapter, shall be executed by the Commissioner and the lessee, in the same manner as provided in section 19 of this chapter for leases of gold mines.¹

¹ *Temple v. Attorney-General of Nova Scotia*, (1897) 27 S. C. R. 355, affirming, (1897) 29 N. S. R. 288.

In the *Palgrave Mining Co. v. McMillan*, (1892) 25 N. S. R. 57, the case of *Duke of Hamilton v. Graham*, (1871) L. R. 2 H. L. (Sc.) 168, is discussed.

See also cases cited: *Eardley v. Granville*, (1876) L. R. 3 Ch. D. 826; *Proud v. Bates*, (1864) 34 L. J. Ch. 406; *Ballacorkish Mining Co. v. Harrison*, (1873) L. R. 5 P. C. 62.

See Acts 1893, c. 2, s. 4.

(a) Leases of mines other than gold or gold and silver mines, shall be for the term of twenty years, and shall contain all the conditions, provisions, and reservations generally contained in such leases, or that may be required for the safe and proper working of the mines, or that may be required by an order of the Governor in Council, or by this chapter, or any Act hereafter passed by the Legislature of this Province; and such leases may be renewed on the same terms and conditions as are hereinafter provided, but such renewals shall not extend or be construed to extend to a period beyond eighty years from the date of the lease.

(b) In the granting of leases hereafter there shall be reserved as a barrier a space of ten yards in width running all around the area leased, which barrier shall not be opened or mined except by the consent of the owner of the adjoining area and by the order of the Governor in Council, and in case of a mine in lands covered with water, the barrier of reservation as above shall be twenty-five yards in width, and shall not be opened or mined unless by the consent of the owner of the adjoining area, and by the order of the Governor in Council. Provided that the Governor in Council shall have power at any time upon the production of satisfactory evidence that the opening or working of any barrier would tend to the safety of a mine or of the workmen employed therein, or to prevent the waste of coal, to order that such barrier be opened or worked in such

manner as may be deemed advisable. The cost of making such opening, working, etc., shall be borne by the party to be benefited, and he shall pay to the other party any necessary annual rental for drainage, ventilation, damages or other loss or damage that may arise. The party to be benefited shall also give bonds to the Queen, in twice the amount estimated by the Governor in Council as necessary to make such opening or working, to ensure the proper execution and completion of such opening or working. Should any question arise as to the cost of making such opening or working, or in respect of the manner of making such opening or working, or in respect of any annual rental for drainage or ventilation, or any repairs or damages to such opening, or in respect to any point in connection with the opening or working of such barrier not herein provided for, the question shall be referred to three arbitrators, the award of a majority of whom shall be final. Two of these arbitrators shall be appointed, one by each lessee and the third by the two arbitrators conjointly, or if they do not agree by the Governor in Council. These arbitrators shall also direct that satisfactory security be given to the Queen with proper securities for the payment of any annual rental for water or air leave, or for repairs or damages that may arise out of such opening or working by the party to be benefited. Provided that the provisions of this sub-section shall not be construed to permit of any opening being made that may tend to the injury of the property of either lessee unless with the consent in writing of both lessees. Any lessee having occasion to believe that the barrier of an adjoining area has been encroached upon shall upon application to the Commissioner receive permission to enter such area personally or by his agent with the Inspector or his Deputy, and to make such survey as may be required to define the relations of such workings to the barrier.

(c) A lessee of any mine other than of gold or gold and silver, granted under this chapter or any Act passed by the Legislature of this Province, shall not at any time during the term of his lease or any renewal thereof, assign, transfer, set over, mortgage or otherwise part with the premises granted, or any part thereof, or such term or any portion thereof, to any person whomsoever, without the license, consent or approbation of the Governor in Council first had and obtained for the purpose, and signified under the hand and seal of the Commissioner of Mines.

(d) The ratification by the Governor in Council, signified under the hand and seal of the Commissioner of Mines, shall be equivalent in all cases to the license, consent and approbation of the Governor

in Council first had and obtained for the purpose under sub-section (c), and any assignment or transfer which has been so ratified, or may hereafter be ratified, is and shall be of the same force and effect as if such license and consent and approbation had been given before such transfer.

(c) Any lease may at any time be surrendered by the lessee in the same manner and upon terms similar to those hereinbefore prescribed for the surrender of a gold or gold and silver mining lease.

(f) This sub-section, as originally enacted, was repealed by the Act of 1893, c. 2, s. 3, and the following substituted therefor:

Whenever an area shall have been leased for working minerals other than gold or gold and silver, the owner thereof shall pay annually in advance to the Commissioner of Public Works and Mines the sum of thirty dollars for each square mile or part of a square mile contained therein. In case such annual payment in advance shall not be made, notice of such default shall be forthwith sent by the Commissioner or Deputy by registered letter to the post office address of the lessee or lessees, and if such rental be not paid within thirty days after the posting of such notice, then such area shall become and is hereby declared to be forfeited. The payment made at the time of application shall be considered the first annual payment in advance, and application for leases or licenses of the areas so forfeited may be made at the mines office, at ten o'clock of the morning of the next day after the last day of the said period of thirty days, and the Commissioner or Deputy Commissioner, as the case may be, may receive the same; as long, however, as said payment is made annually in advance, the lease shall not be forfeitable for non-working. It is declared that this summary declaration of forfeiture shall apply to all leases already issued, containing the conditions of annual rental, and to all leases brought under the conditions of said annual rental by written agreement. Should the payment of royalty from any lease exceed the annual rental in any one year, such annual rental may be credited to the lessee as the annual rental for the following year.¹

¹ See also Acts of 1893, c. 2, ss. 7, 8.

(g) Whenever any lease shall become forfeited under the preceding sub-section, it shall be held to be subject to the conditions of sections 130 and 131 of this chapter.

A lease was issued under this Act by the Crown to W. *et al.* of gold mining areas on 27th November, 1886, to commence on 25th November, 1886, through whom the relators claimed. The Act in question provided that the lessee should perform a certain number of days' work in

each year for each area leased, and that on failure so to do, the lease was subject to forfeiture. The Act was amended in 1889 by chapter 23, whereby the lessee was permitted to enter into an agreement in writing with the Commissioner of Mines to pay in advance a rental of fifty cents per area in lieu of performing the work, which payments in advance were to be construed to commence from the "nearest recurring anniversary of the date of the lease." On 17th December, 1889, the relators entered into an agreement with the Commissioner of Mines, and on 31st December, 1889, made their first annual payment in advance and received a receipt from a clerk for "amount of fee accompanying application for rental lease No. . . . at . . . one year from the 15th November, 1889." On 25th November, 1890, the lease was forfeited for non-payment of rent in advance, and the relators learned of this in December, 1890, when attending the Mines Office to make their next payment. Held, that the date of the commencement of the lease was 27th November, 1886, and the forfeiture was set aside on the ground that the rental was not in arrears, the words "nearest recurring anniversary" having reference to the anniversary next ensuing after the date of the lease, and that as the powers of the Commissioner of Mines were statutory only, he could not make a different contract from that provided for by the statute.

The relators having taken out a license to search over the same areas after learning of the alleged forfeiture, and on the expiry thereof having obtained a lease of the same areas upon which their plant was situate, were held not to be estopped, as their acts were not of a voluntary character, the Commissioner's action under colour of office in forfeiture amounting to duress: *Attorney-General v. Sheraton*, (1896) 28 N. S. R. 492. *Graham, E.J.*, said, at p. 500: "The principle of surrender by operation of law is this: 'If a lessee takes a second lease, notwithstanding he already has one outstanding, not being allowed in law to dispute his landlord's power to grant, he is estopped from saying he did not surrender the first lease, that condition being indispensable to the validity of the second lease. But it is well established that the second lease must be a valid one, or else no surrender of the first will be implied.' *Berkeley v. York*, (1805) 6 East, 86; *Biddulph v. Poole*, (1848) 11 Q. B. 713; *Egremont v. Courtenay*, (1848) 11 Q. B. 702," and at p. 501: "As to duress under colour of office, I cite *United States v. Ungley*, (1831) 5 Peters, 115; *Maxwell v. Griswold*, (1850) 10 Howard, 242; *Swift Company v. United States*, (1883) 111 U. S. 22, and *Steele v. Williams*, (1853) 8 Exch. 625.

(h) Whenever the lessee of an area other than of gold or gold and silver, shall in any one year pay royalty on minerals mined out of such area amounting to a sum greater than that due as the annual payment herein provided from the area leased by him, he shall be entitled, on application, to a refund of the annual payment due for that year.

(i) It shall be lawful for any person at present holding a lease under the provisions of this chapter for minerals other than gold

or gold and silver, by duplicate agreement in writing with the Commissioner to avail himself of the provisions of this chapter, so far as it relates to the annual payment and its refund as in the preceding sections (f), (g), (h), such payments and refunds to be construed to commence from the nearest anniversary of the date of the lease, and the payments to be at the rate of thirty dollars for each square mile or portion of a square mile contained therein, and as long as said payment is made annually in advance the lease shall not be forfeitable for non-working.

109. All leases of mines of gold and of gold and silver, and of mines other than mines of gold and gold and silver shall contain the provisions respecting the payment of rental and its refund under certain conditions as provided herein.

110. The Governor in Council may by special order authorize the granting of a lease of a larger area than one square mile if, on investigation of the special circumstances of the case, it is shown that by reason of a deficiency of mineral or other natural causes an area of one square mile was insufficient to make a profitable mine (but in no case to exceed two square miles), and in such case may impose such further conditions, not at variance with the spirit of this chapter, as may be deemed just, and in like manner and on the same conditions two leases of one square mile each may be held and treated as one lease. And the Governor in Council may in a similar manner and for similar reasons increase in the same proportion any leased areas of one half or one quarter of a square mile.

111. All leases of copper and lead mines which have been or may be issued under this chapter or any Act passed by the Legislature of this Province, shall be held and construed to convey to the lessee or lessees therein named and his or their assigns all ores and metals held in composition, associated with or contained in the copper or lead ores therein conveyed, and the same shall be subject to the same royalties as are hereinafter provided for such ores and metals.

112. (Repealed by Statute, 1893, c. 3, s. 5).

113. Leases of minerals other than of gold or gold and silver may be renewed in accordance with the provisions of this chapter; provided, however, that the Legislature shall have power to increase the amount of annual rental to such an extent as may be deemed proper and necessary.

114. All lessees of mining areas other than gold or gold and silver mining areas shall within six months after the issuing of such leases, place or cause to be placed at each and every corner of the areas contained in their respective leases a post or monument of stone or other durable material, of such size, nature and character as the Commissioner may determine.

(a) Each post or monument shall have distinguishing letters or a suitable inscription cut or marked thereon, designating the corner where placed. Provided always that in cases of areas any corners of which are covered with water, or where the placing of such posts or monuments at such corners would cause private or public inconvenience, it shall be lawful and requisite for the lessees, with the consent of the Commissioner, to place such posts or monuments on the land adjoining such corners, in such positions as shall be approved by the Commissioner.

(b) The area of each lease shall be defined as herein required according to the priority of the granting of such lease, and the lessee of the area first leased shall give to the lessees of the adjoining areas or their agents a written notice that on a day named—to be not less than ten days after the service of such notice—a survey will be made for the purpose of establishing the boundaries of the area and placing the posts or monuments required by this chapter. Such survey shall be made by a sworn surveyor, whose appointment shall be sanctioned by the Commissioner; and such surveyor shall make a return of such survey with an accurate plan thereof to the Commissioner.

(c) If within forty days after such return has been made by the surveyor to the Commissioner no complaint be made to the Commissioner that the boundary lines of the area as so defined are not in accordance with the lines as originally defined, the boundary lines of the area as so defined by the surveyor shall, as between the lessees, be held to be the true and correct boundary lines of the area.

(d) If within the year above mentioned, from disagreement or otherwise, such boundary lines are not established and defined as required by this chapter, the Commissioner may cause a survey to be made and the area to be defined as hereinbefore required, and the boundaries so established shall be held to be finally determined.

(e) The expenses of all such surveys and of the placing or erection of all such posts or monuments as required by this chapter, shall be paid by the lessees of the areas defined, and where such surveys are made and such posts or monuments are established by virtue of

the next preceding section, such expenses may be sued for and recovered from the lessees in the name of the Commissioner, as an ordinary debt of like amount.

(f) Each monument or post as often as it shall be destroyed or removed, shall be replaced by the lessee at his own expense within one month; and the proceedings therefor shall be the same as heretofore required for the original definition of the area.

(g) Where the lessee is not the owner of the land included in the area leased, and on which the boundary posts or monuments are required to be placed, he shall be at liberty to set them up on such land, but shall pay the proprietor for the damages caused thereby.

(h) If the proprietor and the lessee cannot agree on the amount of such damages, the lessee may call on any three disinterested justices of the peace for the county in which the area is to appraise the same; the justices so called upon shall forthwith appraise such damages; and their award or that of any two of them shall be final.

(i) Each of such justices of the peace shall be entitled to one dollar a day for the time actually and necessarily employed in making such appraisement, besides travelling fees at the rate of ten cents per mile, to be computed from the residence of the justice to the place where the appraisement is made; such pay and travelling fees to be paid by the lessee.

(j) Any lessee neglecting to set up such posts or monuments, or to renew or replace the same when removed or destroyed, as required by this chapter, shall forfeit a sum not exceeding one hundred dollars for every such post or monument he shall neglect to set up or replace.

(k) Any person wilfully destroying, defacing, injuring or removing any such post or monument, or attempting so to do, shall forfeit a sum not exceeding one hundred dollars for each offence.

(l) Any penalty under this chapter shall be recovered in the name of the Commissioner, before two justices of the peace for the county wherein the offence is committed, in the same manner as an ordinary debt.

115. It is hereby declared and enacted that chapter 23 of the Acts of 1889, shall not be deemed to have taken and did not take from any holder of a license to search in force at the time of passing of said chapter, the right to select an area and apply for and obtain

a license to work the same in the same manner as such holder could have, had said chapter not been enacted, and said chapter shall not be deemed to have taken and did not take from any holder of a license to work at the time of the passing of said chapter the right to obtain an extension of such license to work to three years upon the additional payment being made as provided in section 95, of chapter 7 of the Revised Statutes, fifth series, but all holders of licenses to search at the said time shall be deemed and are hereby declared to have had the same right to select, apply for and obtain licenses to work, and all holders of licenses to work at the said time shall be deemed, and are hereby declared to have had the same right to such extension as aforesaid, as they would have had if said chapter had not been enacted, and all licenses to work, and all such extensions of such licenses to work as aforesaid, shall be held to have been and to be as valid and good as they would have been had said chapter 23 not been enacted.

QUARTERLY RETURNS.

116. On or before the tenth day of each of the months of January, April, July and October in each and every year, the owner, agent or manager of every mine (other than gold or gold and silver mine) leased from the Crown, shall send to the Commissioner a correct return specifying the quantity of coal, iron ore, or other mineral wrought or gotten in such mine, the probable use and destination of the same, and the amount of royalty which has accrued upon such material extracted during the last previous quarter, and on or before the last days of January, April, July and October in each year, a correct return specifying the number of days' labor and the number of persons ordinarily employed in or about such mine below ground and above ground, and the different classes of the persons so employed, and the cost and description of all shafts, quarries, slopes, levels, planes, works, machinery, tramways, and railways sunk, driven, opened or constructed during the preceding quarter. Such returns shall be sworn to by the agent or manager and by one or more credible persons principally employed in or about the working and management of such mine, before the Commissioner or a justice of the peace.

ROYALTIES.

117. All ores and minerals (other than gold or gold and silver) mined, wrought, or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes,

fifth series, or of any Act heretofore passed by the Legislature of this Province, shall be subject to the following royalties to the Crown for the use of the Province, that is to say :—

(a) COAL.—Ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel. The words “removed from the mine” in this sub-section shall not be held to apply to coal used for domestic purposes by the workmen employed in and about such mine; nor to coal used in mining operations in and about the mine from which such coal has been gotten; but coal so used shall not be liable to pay royalty.

By chapter 3 of the Acts of 1892, entitled “an Act respecting the Royalties on Coal” (passed the 30th day of April, A.D. 1892), it is enacted that “whereas, by section 117 of an Act of the present session, entitled ‘An Act to amend and consolidate the Acts relating to Mines and Minerals,’ it is provided that the royalty on coal payable to the Province shall be ten cents per ton; and whereas, it is expedient to fix the date at which such royalty shall take effect, and to make certain provisions respecting the payment of royalties during the present year;

Be it therefore enacted by the Governor, Council, and Assembly, as follows:

1. The royalty of ten cents per ton on coal, as fixed by the said section, shall be held to have taken effect on the twenty-third day of February, 1892.

2. The owner, agent, or manager of any coal mine in making his quarterly return to the Commissioner of Public Works and Mines as provided by law, may attach to such return an affidavit in the following form, which may be sworn to before the Commissioner of Public Works and Mines, or his Deputy, or any Judge of the Supreme or County Court:

I, _____ being the owner, agent,
or manager of the coal mine worked under authority of lease Number _____
at _____, in the county of _____,
make oath and say that I have the means of knowing, and do know,
that of the coal sold from the said mine during the quarter ended _____

tons were sold and delivered under contracts which were actually made and entered into prior to the twenty-third day of February, 1892, and that such contracts were made by me or my company in the belief that the royalty on coal as then existing was not to be increased during the year 1892.

Sworn to before me at _____ }
in the County of _____ }
this _____ day of _____, A.D. 189 . }

3. Upon the receipt of a return and affidavit in proper form, as provided by the foregoing section, the Commissioner of Public Works and Mines shall not impose upon the coal mentioned in the said affidavit the

royalty of ten cents per ton, but shall receive payment of royalty on such coal at the rate established by law prior to the passing of this Act.

4. Whereas, it has been represented that certain coal companies which had not actually entered into written contracts for the sale of coal prior to the twenty-third day of February, 1892, had made certain *bona fide* offers of their coal to certain railway companies, which offers were outstanding on the twenty-third day of February, and which were subsequently accepted by such railway companies, it is hereby enacted that the Commissioner of Public Works and Mines may inquire into any such case that may be brought to his notice, and if satisfied by affidavit, which may be sworn to before him or the Deputy Commissioner, that such representations are correct, and that the sales were *bona fide* made by reason of such offers, he may receive payment of the royalty on such coal at the rate existing before the passing of this Act.

(b) COPPER.—Four cents upon every unit, that is, upon every one per cent. of copper contained in each and every ton of two thousand three hundred and fifty-two pounds of copper ore sold or smelted.

(c) LEAD.—Two cents upon every unit, that is, upon every one per cent. of lead contained in each and every ton of two thousand two hundred and forty pounds of lead ore sold or smelted.

(d) IRON.—Five cents on every ton of two thousand two hundred and forty pounds of ore sold or smelted.

(e) TIN AND PRECIOUS STONES AND ANY OTHER MINERALS THAT MAY BE RESERVED.—Five per cent. on their values.

(f) Provided that in respect to the payment of royalties on copper, lead, iron, tin, precious stones and any other minerals that may be reserved as provided for in sub-sections (b), (c), (d), (e) of this section, the Governor in Council shall have power to lower the rates of royalty thereby prescribed for any term up to the first day of May, 1897, on being satisfied that the owners of such leased minerals have commenced effective mining operations for the extraction of such minerals or any of them.

118. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the Legislature.

119. All royalties now or hereafter due to the Province shall bear interest at the rate of five per centum per annum.

120. All lessees of mines other than gold or gold and silver mines in this Province, their executors, administrators and assigns, shall, upon giving notice in writing to the Commissioner of Mines at least six months previous to the expiration of their leases, respectively, of their intention to renew such leases, respectively, for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, or as prescribed by this chapter or by any Act that may be passed by the Legislature of this Province, and in like manner upon giving a notice before the expiration of such renewal term to a second renewal and extension of term of of twenty years from and after the expiration of such renewal term, a in like manner upon giving like notice before the expiration of such second renewal term, to a third renewal and extension of twenty years from and after the expiration of such second renewed term, provided that at the time of giving such notices and the expiration of such terms, respectively, the said lessees, their executors, administrators and assigns, are and shall continue to be *bona fide* working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained within the true intent and meaning of section [122] ¹ of this chapter; and provided that the lessees have paid all rentals due on leases not actually being worked; and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked a larger area than five square miles.

¹ See Acts 1893, c. 3, s. 6.

(a) In case the workings of a colliery extend under ground covered by two or more leases, the Commissioner may renew such leases on it being satisfactorily proven to the Commissioner that the ground covered by said leases is necessary to the satisfactory and profitable working of said mine.

(b) In case the workings of one area have been extended into an adjoining area, even if there is now no coal being mined in the first area, both leases may be renewed in whole or in part, as may be decided by the Commissioner on the special circumstances of the case.

(c) In the case of works being prosecuted outside of an area for the purpose of winning the coal in said area, the lease of said area may be renewed on it being satisfactorily shown to the Com-

missioner that said works are being continuously and effectively prosecuted.

(d) In the case of an unworked area adjoining a mine being worked, the works of which would be a natural outlet of said unworked area, and that it was necessary to the profitable working of the mine, the lease of said area may be renewed on it being shown to the Commissioner that the said workings would be a natural outlet for the product of said unworked area, and that said unworked area was necessary to the profitable working of the mine.

(e) Subject to the approval of the Governor in Council, the Commissioner of Public Works and Mines may renew any lease, notwithstanding that the full sum due for royalties shall not have been paid, if the holder of such lease shall produce evidence satisfactory to the Governor in Council that such non-payment is due to the depression in the trade, or other exceptional circumstances, and that there is reasonable prospect of payment being made if an extension of time be allowed.

SURRENDER.

121. The holder of any lease may at any time surrender the same by notice in writing, signed by him and filed, together with his counterpart of lease, in the office of the Commissioner; but in case the counterpart of the lease has been lost, or cannot be obtained, an affidavit to that effect, made by the lessee, will be received in place of such counterpart; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease, for or in respect of any act, matter or thing, for which at the date of such surrender he was liable under the terms of such lease. Provided that the Commissioner of Mines has not served a notice for forfeiture on the lessee or lessees, as provided for in this chapter of the Revised Statutes; in such case the area or areas leased cannot be surrendered without the consent of the Government, but must await the decision of the Commissioner of Mines as to forfeiture.

122. Where it shall be represented to or come to the knowledge of the Commissioner of Mines that any mines or minerals claimed under a lease from the Crown, or under a lease granted pursuant to this chapter, have been abandoned for the space of one year, have not been effectively and continuously worked, or have been worked only colorably, or to prevent a forfeiture under the terms of such lease, the Commissioner of Mines shall cause a notice, to the effect

of the form of Schedule E, to be personally served upon the lessee, or some one of the lessees, where more than one of them are included in the same lease, or his or their agent, or person principally employed on the premises, or shall cause such notice to be posted up upon the premises leased, where no person can be found upon whom to make service thereof, informing him of such charge, and appointing a time, to be not less than six months after the service or posting up of such notice, and also a place, for the investigation thereof. At the time and place appointed, the Commissioner of Mines shall proceed to investigate such case, and decide thereon, and shall thereupon give notice of his decision to the lessee or his agent, by causing such notice to be served or posted up, as in this section above directed; and if within such term of six months, the lessee or his assignee shall and do commence and prosecute effective mining operations, to the satisfaction of the Commissioner of Public Works and Mines, according to the true intent and meaning of the terms, covenants, and stipulations in the lease contained, and of this section, or within the period of six months shall avail himself of the provisions of subsection (i) of section 108 of this chapter in respect to rentals, such mining areas so leased shall not be forfeited.¹

¹ In the *Queen v. Church*, (1891) 23 N. S. R. 347, it was held, that the Commissioner of Works and Mines could not under section 107 of R. S. N. S. c. 7 (5th ser.) decree notice of forfeiture for non-payment of one of the sums annually payable by the lessee for coal mines without notice to the lessees.

Quære, whether the Commissioner in so acting did so as a Judge or a landlord.

As to the jurisdiction of the Commissioner, see *Mott v. Lockhart*, (1883) L. R. 8 App. Cas. 569, and in *Re Ovens*, (1891) 23 N. S. R. 376; *Re Jeffrey McColl*, (1889) 22 N. S. R. 19.

Proceedings were had before the Deputy Commissioner of Mines at Halifax to obtain the forfeiture of a mining property at Montague, owned by defendant, who resided at Londonderry, and had agents at Montague, but no service of notice was made on either him or them; and neither he nor they knew anything of the proceedings until after the areas were forfeited. The notice was posted by a person who appeared to be interested in procuring the forfeiture, and who swore that neither Tobin nor any agent or person employed on the premises could be found in the district on whom personal service could be made. The matter being brought up by *certiorari*, it was held that in order to dispense with personal service, evidence should have been given of a *bona fide* search, or that defendant was out of the Province. The parties applying for the forfeiture entitled the process below "*The Queen v. Tobin*."

Held, that the applicant had a right to use the same title in the subsequent proceedings in this Court. A rule was granted to compel the parties sustaining the forfeiture to file their affidavits on a day previous to the hearing, to be named by the Court. *Queen v. Tobin*, (1881) 14 N. S. R. 305; (1881) 2 R. & G. 305.

Proceedings were taken to forfeit certain gold mining areas, and the notice pursuant to statute was addressed to the defendant, who was the mortgagee, and not the owner of the areas, and it was held that the Commissioner of Mines had no jurisdiction for want of notice to the owner. *Queen v. Elze*, (1882) 16 N. S. R. 130; (1883) 4 R. G. 130.

In an action brought for trespasses to plaintiffs' mining areas, defendant justified as Commissioner of Mines under a forfeiture, and set out in one of his pleas, *inter alia*, that all proceedings requisite by law to be taken to effect a forfeiture of said lease were taken, and all necessary notices setting out defaults and breaches were duly given, and the defendant being such Commissioner, duly gave judgment forfeiting said lease . . . in the form and manner prescribed by law. It was held that this plea did not set out with sufficient regularity the steps taken to give the Commissioner jurisdiction to forfeit the lease. *Wallace v. Creelman*, (1884) 17 N. S. R. 418; 5 R. & G. 418.

The Commissioner of Works and Mines, to an action of trespass, pleaded proceedings taken to forfeit the areas in question, and it was held that the allegation that "no person could be found upon whom to make service of the notice" of process to forfeit was sufficient, without alleging that no person could be found in the gold district, within which the areas were situated, and that a plea setting out the proceedings taken in substantially the terms of the Act was sufficient. *Wallace v. Creelman*, (1886) 18 N. S. R. 546; (1886) 6 R. & G. 546.

123. No mere colorable working shall prevent a forfeiture; and the Commissioner aforesaid shall have power to examine witnesses on oath, and to receive all other necessary testimony, in respect of the mining operations; and if the decision shall be that such operations are not effective, but merely colorable, the mine or mines shall be declared forfeited, and notice of the decision shall be given in accordance with the provisions in section 126.

124. The decision of such Commissioner shall be in the form in Schedule F; and the lessee or assignee may appeal to the Supreme Court, or a Judge thereof at Chambers, against such decision; any party desiring to appeal from such decision shall give notice in writing to the Commissioner of his intention to appeal within twenty days after such decision being made known to the party dissatisfied therewith, but always within one year from the date of such decision; and shall make and file with such notice an affidavit, sworn to before a Commissioner of the Supreme Court, that he is dissatisfied with such judgment or decision, and that he verily believes the lease

should not have been forfeited and shall also set forth therein the grounds of his appeal, and within ten days thereafter, enter into a bond with two sureties the penalty of six hundred dollars, to enter and prosecute his appeal according to the provisions of this chapter, and pay all costs which may be adjudged against him by the Court of Appeal, and thereupon the Commissioner shall file such notice and affidavit, together with all papers and documents connected with such appeal, with the Prothonotary at Halifax, on or before the first day of such term.

125. Where notices are to be posted on the premises under this chapter, or any of the sections thereof, and the areas in respect of which the notices are to be posted shall be covered with water, the notices may be posted on the land as near as conveniently may be to the areas so covered with water.¹

¹ A lease of certain coal areas granted to S. was declared forfeited by the Commissioner of Mines, on the ground that the areas had been abandoned, and not effectively and continually worked for the space of one year. S. was absent from the Province at the time the proceedings were taken, and the only notice given him was by means of a paper posted upon a cliff near the sea shore, the areas being under water. The notice was defective for want of definiteness as to the charges against S., and, moreover, there was no evidence given before the Commissioner that the sheriff who posted the notice had made any inquiry to ascertain whether there was any agent or person employed in connection with the premises upon whom, in the absence of S., the notice could have been served, nor was any evidence given as to the locality of the cliff upon which the paper was posted, or its contiguity to the areas in question.

Held, that the preliminary notice being deficient in so many points all proceedings founded upon it were void, and therefore the forfeiture must be set aside. In *re Sword's Lease*, (1873) 9 N. S. R. 389; 3 N. S. D. 389.

After investigation before the Commissioner of Mines to determine which of a number of applicants for a lease was entitled, the Commissioner decided in favour of one O'Toole on the ground of priority. The several applicants were all present at the Mines Office on the morning on which the areas were presumed to be open for application, and on the market clock commencing to strike, a struggle took place between them in their endeavour each to be the first to bring his application to the notice of the Commissioner. O'Toole had entered the area under a lease from Wallace, the original lessee, and the present appellant, but had claimed that the agreement between himself and Wallace had terminated some time before the application. The lease was in writing and was not put in, and there was nothing to show that the proviso for terminating it was one of which O'Toole could avail himself. The Commissioner in his decision intimated that he had nothing to do with this

branch of the inquiry. Held, that the Commissioner was wrong in deciding the matter on the mere question of priority, and should have considered the point that, as the holder of a chattel interest under Wallace, O'Toole could not lawfully do any act to defeat the title of his lessor; and as this point had not been considered, the appeal must be sustained with costs. *Re Gold Mining Areas, Waverley*, (1882) 16 N. S. R. 280; (1883) 4 R. & G. 280.

126. Whenever a lease of a mine other than of gold or gold and silver shall become forfeited, or by the terms of the lease, the Governor in Council may direct such additional terms to those prescribed hereby on which such mine shall be re-let or re-granted by the Commissioner.

127. And whenever royalties are due from a mine so forfeited, the Governor in Council may make regulations for the payment of royalties then due by any applicant for a new lease or license.

128. There shall be kept in the office of the Commissioner of Mines, maps of the different mining districts in the Province, on which shall be delineated as accurately as may be, all the areas under license or lease, as mines other than gold or gold and silver mines; and also a book or books of registry, in which shall be registered all the licenses and leases of such areas, and such maps and book or books shall be open to the inspection of the public upon payment of a fee of twenty-five cents.

129. The provisions of the foregoing sections, from 91 to 132 both inclusive, shall apply only to mines other than gold and gold and silver mines.

MISCELLANEOUS.

130. No lease granted under the provisions of this chapter shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, by reason of such lease not having been previously registered in accordance with the provisions of the chapter of the Revised Statutes, "Of the Registry of Deeds and Eneumbrances Affecting Lands."¹

¹ *Cochrane's Hill, Sherbrooke*, was proclaimed a Gold District on June 3rd, 1868. On the 13th of the same month the relator, not being aware of the proclamation, made application for ten areas, in accordance with the terms of chapter 25, R. S. (3rd series), section 36, describing the same by metes and bounds. Previous to this, several applications for areas had been made, but none of them gave a description of the areas applied for by metes and bounds. On the 19th of June, the areas

in question were located and given to defendant. Held, that something more than a mere proclamation is required before applications for areas can be made under any other section of the Act than section 36. Areas must be laid off in a particular way—plans prepared, etc. Held, also, that the application of the relator was made so in accordance with the spirit and provisions of the Act as to give him a right to claim a lease as against prior applicants, whose applications failed to comply with the provisions of the law.

Per Wilkins, J.: The defendant, being in possession under lease from the Crown, is not to be regarded as a trespasser or intruder on the lands of the Crown. *Attorney-General v. McDonald*, (1870) 8 N. S. R. 125; (1870) 2 N. S. D. 125.

Plaintiff made an oral agreement with G., the owner of a gold claim, to work a portion of the claim, plaintiff receiving two-thirds of the profits after paying all expenses. Defendant, acting as sheriff of the county of Hants, levied upon and sold certain gold taken out of the mine by plaintiff, on an execution against G. Plaintiff having brought trover for the gold so taken, and a verdict having passed in his favour, it was held, that under the agreement to work the mine for a share of the profits, no interest in the mine was transferred to the plaintiff within the meaning of section 4 of the Statute of Frauds. *McDonald v. Geldert*, (1874) 3 N. S. D. 551.

In *Westhaver v. Broussard*, (1893) 25 N. S. R. 323, the plaintiff and defendant having verbally agreed that upon plaintiff transferring to defendant an interest in certain mining areas, defendant would pay and advance one-fourth, not exceeding a stated amount, of the expenses then incurred and to be incurred for prospecting, working, etc. Plaintiff incurred expenses of which defendant was ordered to pay his proportionate amount. See *McDonald v. Power*, (1878) 3 R. & C. 340; *French v. Styring*, 3 C. B. N. S. 357.

The plaintiff became manager of defendant's mine under an agreement in writing providing, among other things, that certain claims against the property, including plaintiff's salary "to be paid out of the net proceeds thereof, produced either from working or a sale," should have priority in the order stated in the agreement. Held, that the agreement to pay salary was absolute and was not dependent upon proceeds arising from the working or the sale of the mine. Parol evidence was admitted to prove that defendants agreed to provide funds for the operation and development of the mines, and that they neglected to do so, and the defendants were held liable. *Townshend v. Adams*, (1894) 26 N. S. R. 78.

In *Miller v. Cochran Hill Gold Mining Co.*, (1896) 29 N. S. R. 304, the Supreme Court of Nova Scotia divided equally upon the question of the authority of the manager of a mine to bind the company under the following circumstances: The company purchased the mine from B., who agreed to transfer the mine and to construct among other works a boarding-house for the men. The materials from which the house was constructed were supplied by plaintiffs on the order of the manager given to the contractor at the request of plaintiffs, who only knew the

manager as such. In the result the verdict of the jury for plaintiffs against the company was upheld. Ritchie, J., said at p. 306: "If the erection of a boarding-house was necessary for the efficient operation of these mines, and was in accordance with the usual practice in such cases, and this was for the jury, the authority of the mining manager to bind the company for such work is, I think, beyond doubt (Ex parte Chippindale, 4 DeG. M. & G. 40; Hawken v. Bourne, 8 M. & W. 703.)"

Graham, E.J., said at p. 312: "To pledge the credit of the company for building materials for a third person is not, I apprehend, within the apparent scope of the authority of a manager or mining manager. Simpson's case, 58 Law Times, 16; Hawtayne v. Bourne, 7 M. & W. 595; Cox v. Midland, 3 Ex. 268; Delta v. Williams, 40 N.W. 940; Allemon v. Simmonds, 23 N.E. 768; Victoria Co. v. Fraser, 29 Pac. 667."

The Mines and Minerals Act, R. S. N. S., 5th series, c. 7, s. 130, enacted that "all licenses and a description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind affecting such licenses" should be registered in the office of the Commissioner of Mines, any mortgage, etc., not so registered to be void as against subsequent *bona fide* mortgages, etc., previously registered. By the Act of 1885, c. 3, s. 1, passed April 24th, 1885, this section was amended by adding a proviso requiring such mortgages, bills of sale, attachments, judgments, transfers or documents of title to "proceed from or be charged against the parties who may appear upon the registry to be lessees or licensees of such gold and silver, coal and other mines, so as to be transferred or to be encumbered." In an action against the commissioner for refusing to register a document in his office, and for registering a later transfer, it appeared that on the 16th June, 1883, a letter was addressed to the commissioner enclosing what purported to be a copy of a transfer from V. to G. of an interest in a property at Montague. The transfer itself was not recorded, and the legal title to the property was vested at the time in D. under lease No. 105. On the 8th October, 1885, G. transferred to plaintiff one-third of all his interests in mining leases and mines of gold, etc., inclusive of all areas possessed by him and registered in his name in Montague and other districts named, and of all areas in which he was interested, "though not named on the Records of the Mines Office." The latter transfer was registered against the properties expressly named, but was not registered, and no request was made to have it registered against lease No. 105, until after the passing of the amending Act of 1885. After the passage of this Act the commissioner was requested to record the transfer from G. to plaintiff, but refused. The interest of G. under lease No. 105, was subsequently purchased by A., who had the transfer recorded by defendant, both A. and the party to whom he sold having actual notice of plaintiff's claim, and it was held, that as when the request to have the transfer to plaintiff recorded against lease No. 105, the Act as amended rendered it incumbent upon the commissioners to record only transfers proceeding from those who appeared on the registry to be lessees of the mine, and G. did not appear to be a lessee or sub-lessee, or to derive title through a lessee, no case of negligence on the part of the defendant had been proved, and plaintiff was not entitled to recover even nominal damages; also, that in no case could plaintiff recover other than nominal

damages, there being no proof of the nature or value of the equitable interest, or that it had been lost or affected by the failure to register; held, further, that A. was not a bona fide transferee in respect to plaintiff's claim; further, that if the document of transfer from G. to plaintiff was properly lodged for registry, it would be sufficient, under the doctrine of *Jost v. McCulsh*, 25 N. S. R. 519, to affect subsequent transferees with notice; also, that the provision added by the amendment, under the Act of 1885, operated as a repeal of the provision in respect to documents mentioned; and that in the absence of a request for registration, prior to the amendment, plaintiff's right to have his document registered was merely executory, and not vested; and that where a document is handed to the commissioner without directions as to the property against which it is to be registered, and it is registered against properties apparently affected, a case of negligence to search for other properties would have to be made out; also that there would be no negligence in not registering against equitable interests not appearing in the register of the office, and that a general request to register a document against leases standing in the name of G., in Nova Scotia, would be bad, and that the objection would be greater in the case of the transfer in question, which covered areas in which the transferor might be interested, "though not named on the records." A doubt was expressed whether it is the duty of the commissioner, under the practice prevailing in Nova Scotia, to make such searches; and also (per Meagher, J.) whether defendant was bound or ought, in any case, to record a document which was not in the prescribed form, inasmuch as it contained no reference to the lease or leases it was supposed to affect, nor the number of shares intended to be conveyed. *Fielding v. Church*, (1896) 28 N. S. R. 136.

131. The Governor in Council may at any time, by proclamation, as in this chapter provided, declare any district which shall contain an area or areas under license or lease, for the purpose of searching for or working mines and minerals other than gold or gold and silver, to be a gold district; and in such case the area or areas under such license or lease shall, notwithstanding such license or lease, become subject to all the provisions of this chapter which relate specially to all gold districts, and gold and gold and silver mines, under such regulations as the Governor in Council shall make.

132. Repealed by Statute, 1892, c. 2, s. 1.

133. The forms to be used under this chapter shall be substantially the same as those heretofore in use, subject, however, to such amendments and alterations as the Commissioner may from time to time make or direct.

134. Any lessee or licensee of mining areas lying beneath the waters of the sea may make or cause to be made tunnels from the adjacent land above high-water mark, under the waters to such min-

ing areas, doing as little damage as possible to the owners or tenants and lessees of the minerals of the land in which such tunnels shall be made, and the intervening land covered with water, and the mines therein contained. The damages of such tunnelling shall be agreed for, determined, settled and paid, as directed in this chapter from section 20 to section 27 inclusive, and also section 105.

135. If the lessee or licensee of such mining areas cannot agree with the owner or owners of the land, or the lessee or licensee of the mining areas through which it is necessary to drive such tunnels, the Commissioner of Public Works and Mines, subject to the approval of the Governor in Council, shall determine where such tunnel shall be made or commenced, the number of such tunnels, the size, width and depth thereof, the quantity of land to be taken and occupied for the same, and the course and direction which such tunnels are to take through the intervening land covered with water and the mines therein contained; and he shall cause a plan thereof to be made and filed in the office of the Registrar of Deeds for the county where the lands so taken for the commencement of the tunnels shall be situated.

136. Leases of mining areas shall be issued in duplicate; and such leases shall be registered in the Office of the Commissioner of Mines by the Commissioner or some person by him thereto authorized.

137. A certificate of such registry, with the day and year thereof, shall be endorsed on the duplicate delivered to the lessee.

138. All leases which have been passed prior to the passing of this chapter that are not void or forfeited, shall be registered and certified as above if not already so registered.

139. In the case of a lease or a license where there are more than one lessee, declaration in duplicate may be made and signed under seal by all the lessees or their heirs and assigns, stating the proportion owned by each lessee. Such declaration shall be duly proved on oath before any Justice of the Peace or a Commissioner of Mines, and registered as hereinbefore mentioned.

140. All transfers of any interest in mining leases hereafter to be made shall be registered as aforesaid; and a certificate of such registry shall be endorsed on every such transfer, as in the case of mining leases; and such registry and certificate shall be conclusive evidence of the transfer of such mining interests.

141. The forms of declaration and transfer for the purposes of this chapter shall be as in Schedules B and C, respectively.

142. Every company now or hereafter incorporated under any Act of this Legislature, or by any other competent authority, holding or working mines under this chapter, shall file a copy of their charter or Act of incorporation and by-laws or regulations in the office of the Commissioner of Mines before any such company shall commence work, together with a list of the officers of such company; and all changes of officers made shall also be certified to the office of the Commissioner of Mines; and until such certificate is filed no such new official need be recognized by the Commissioner of Mines as an official of any such company. Any corporation neglecting or refusing to comply with this section shall be liable to a penalty of not exceeding one hundred dollars, to be recovered in the name of the Commissioner as an ordinary debt.

143. A description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind relating to or in any way affecting the title of gold, or gold and silver, coal or other mines, shall be recorded according to Schedule D, in the office of the Commissioner of Mines; and all licenses and a description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind affecting such licenses, shall be registered in the book of application for mining rights in the office of the Commissioner in the same manner as such licenses and descriptions are now registered; provided that such mortgages, bills of sale, attachments, judgments, transfers or documents of title, shall proceed from or be charged against the parties who may appear upon the registry to be the lessees or licensees of such gold and silver, coal or other mines, so to be transferred, or to be encumbered; and any such mortgage, bill of sale, attachment, judgment, transfer or document of title shall be void as against any subsequent *bona fide* mortgage, bill of sale, attachment, judgment, transfer or document of title which shall be previously registered. A duplicate or true copy, certified by a notary under his seal, of every transfer, mortgage, or other conveyance, registered as above, shall be filed in the office of the Commissioner of Mines before a certificate of registry is given.¹ The fee to be paid to the Commissioner for the registration of any document of title under this chapter shall be fifty cents.

¹ An engine affixed to the premises was held to be a fixture and pass with the land under a mortgage registered under this Act.

The provisions of the Act requiring mortgages, etc., to be filed in the county where the grantor, etc., resides, does not apply to foreign corporations with headquarters out of the Province. *Don v. Warner*, (1896) 28 N. S. R. 202.

See Acts of 1893, c. 2; see also *Fielding v. Church*, (1896) N. S. R. 136, in note to sec. 130.

144. If the applicant for a mining lease shall not execute such lease and file it in the office of the Commissioner for execution and registry by the Commissioner within one year from the time of his application, the areas shall be considered vacant, and applications for a lease or license may be received.

145. The Commissioner shall have power to cause witnesses brought before him in all contested cases or matters which he has power to investigate and decide to be examined under oath, which oath the Commissioner is hereby empowered to administer, and the Commissioner shall have the power to compel the attendance before him of all witnesses in such cases or matters by subpoena under his hand and seal, and said witnesses upon being served with a copy of said subpoena, and paid the conduct money allowed to witnesses for travel and attendance in the Supreme Court, shall be subject to the same penalties for disobeying said subpoena as they are liable to for disobedience to a subpoena issued in the Supreme Court; and like proceedings in contempt under this section may be made to the Supreme Court or any Judge thereof, who may treat failure to obey a subpoena duly issued by the Commissioner in the same manner as disobedience to a subpoena issued in the Supreme Court; and like powers are hereby conferred on Deputy Commissioners in all contested cases and matters before them which they have power to investigate and decide, and the Commissioner and Deputy Commissioner shall have power to take affidavits under oath and to administer the oath in all such cases, and to administer oaths in all such cases where affidavits are required by this chapter, except where such oath is required to be administered by a Commissioner of the Supreme Court. The Chief Commissioner or any Deputy Commissioner shall not receive any application for license or lease of any mines or mining areas the right to a license or lease of which is at the time of such application in dispute before the Commissioner or Deputy or any Court of Appeal.

146. Where royalties are due and owing to the Crown, the Governor in Council shall have power to order the Commissioner of Mines to issue a warrant under his hand and seal of office directed to

the sheriff of the county where the mine in respect of which such royalties are due is situated, requiring such sheriff immediately on receipt thereof to levy on the goods and chattels used in working and operating such mine; and if within the space of twenty days next after such levy such royalties so due are not paid to said sheriff to proceed to sell the same or so much of such goods and chattels as shall be sufficient to pay such royalties and his fees, first having publicly advertised the same for the space of not less than ten days before such sale, and to make return of such warrant, and pay over the sum due for such royalties, to the Commissioner of Mines within thirty days from the issuing thereof. Upon the receipt of such order the Commissioner shall issue such warrant and deliver the same to such sheriff, who shall immediately execute the same according to the exigencies thereof, and the sheriff's fees on such execution shall be the same as for executing a writ of execution out of the Supreme Court in a civil suit.

147. Leases and licenses shall terminate on the recurrence of the day on which they bear date in the year of their termination, and after ten of the clock of the forenoon of the following day the areas may be leased or licensed anew; but nothing contained in this section shall prevent the renewal and extending of licenses and leases as hereinbefore provided.

148. If any lease, or any share or interest therein, becomes transmitted or transferred, in consequence of the death, bankruptcy, or insolvency of any lessee, or in consequence of the marriage of any female lessee, or by any means other than a transfer according to the provisions of this chapter, such transmission or transfer shall be authenticated by a declaration of the person to whom such lease or share or interest therein has been transmitted or transferred, stating the circumstances of such transmission or transfer, and describing the manner in which and the person to whom such property has been transmitted or transferred; and such declaration shall be made before the Commissioner, Deputy Commissioner of Public Works and Mines, or a Justice of the Peace.

149. If such transmission or transfer shall have taken place by virtue of the bankruptcy or insolvency of any lessee, such declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of persons claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female lessee, such

declaration shall be accompanied by a copy of the register of such marriage, or other legal evidence of the celebration thereof, and shall declare the identity of such female lessee; and if such transmission shall have taken place by virtue of any testamentary instrument or by intestacy, then such declaration shall be accompanied by the probate of the will, or the letters of administration, or any copy thereof that may be legal evidence, or would be received in courts of justice as proof of such transmission.

150. The Commissioner of Mines, upon receipt of such declaration, so accompanied as aforesaid, shall enter the name of the person entitled to the lease, or any share or interest therein under such transmission or transfer, in the books of registry, as so entitled thereto.

151. Any affidavit required by any section of this chapter, may be sworn before the Commissioner or Deputy Commissioner, or before a Commissioner of the Supreme Court, or a Justice of the Peace.

152. All applicants for leases or licenses under this chapter shall furnish their addresses, which shall be registered with their leases and licenses, and may at any time be changed by written application of the lessee or licensee. All summonses, notices, or other documents, required to be served under this Act, shall be considered as served if sent by registered letter to such address, or left at such address. In the case of a summons or notice or other document sent by registered letter, the date of such service shall be assumed to be the date at which such letter would have been received in the ordinary course of mail. Where there are more than one applicant for leases or licenses, such service upon any one of the lessees or licensees shall be deemed service upon all.¹

¹ See Acts 1893, c. 2, s. 10, as amended by Acts 1897, c. 4, s. 5.

153. Chapter 7, Revised Statutes, fifth series, "Of Mines and Minerals," and all Acts and parts of Acts in amendment thereof, are hereby repealed.

154. This Chapter may be legally known and cited as "The Mines and Minerals Act, 1892."

155. The Governor in Council may, at any time within one year from the passing of this Act, authorize the Commissioner of Public Works and Mines to accept the surrender of any lease of a coal mine, and may issue in lieu thereof a new lease on the same terms and conditions as such surrendered lease except as respects the royalty to

be paid to the Crown for the use of the Province. Such new lease may omit the provision required by section 4 of chapter 4 of the Acts of 1885, and substitute for such provision the following or words to the like effect, that is to say: "That the royalty of ten cents per ton on all coal, as fixed by the 117th section of this chapter, shall not be increased prior to the 25th day of August in the year of our Lord one thousand nine hundred and six; that the royalty shall not exceed twelve and one-half cents per ton, prior to the 25th day of August, in the year of our Lord one thousand nine hundred and twenty-six, and that in the case of any renewal of a lease to which the holder may be entitled on the 25th day of August in the year of our Lord one thousand nine hundred and twenty-six, under the provisions of the law now existing, the Governor in Council shall fix a rate of royalty which shall be specified in such renewed lease, and shall not be increased prior to the twenty-sixth day of August in the year of our Lord one thousand nine hundred and forty-six."

(1) In the event of any lease being surrendered under this section within one year as above mentioned, and application made for a new lease in lieu of any lease so surrendered as provided for in this section, the Commissioner of Public Works and Mines may, at any time within six months from receiving such surrender and application, issue the lease in this section provided for, and such new lease shall, while following the terms and conditions of the lease surrendered, be as near as may be in the form of lease now issued under the "Mines and Minerals Act, 1892," except as to the stipulations in respect of royalty herein provided for. Such lease when so issued shall be a valid grant of the areas surrendered and applied for under this section, and shall be deemed effectual to pass the title to the areas surrendered from the date of the application therefor.

(2) This foregoing section shall be read as forming part of said section 155, and as if passed therewith. (Acts 1893, c. 2, s. 13.)

156. Notwithstanding anything contained in the 117th, 118th, or 120th section, or in any other part of this chapter, whenever it shall appear to the satisfaction of the Governor in Council that any company or person working or proposing to work any coal mine or mines, is willing to pay to the Province a greater royalty per ton than that fixed by the said 117th section, or is prepared to prosecute coal mining operations on such an extensive scale as would, without a higher rate of royalty, largely increase the Provincial revenue derivable from royalties, the Governor in Council may authorize the Com-

missioner of Public Works and Mines to accept the surrender of any coal lease or leases held by such company or person under the law now existing, or any lease or leases that may be issued under the provisions of the 155th section of this chapter, and may issue in lieu thereof a new lease or leases, containing such terms and conditions as may be deemed expedient as respects the area of any such lease, the period for which the lease shall run, the rate of royalty to be imposed during the whole or any part of such period, and the taxation that may be levied on the property of such company or person; provided, however, that in no case shall any such new lease fix the rate of royalty lower than that fixed by the 17th section of this chapter.¹

¹ Acts of 1892.

CHAPTER 2.

An Act to amend an Act of the present Session, entitled an Act to amend and consolidate the Acts relating to Mines and Minerals.

Passed the 30th day of April, A.D. 1892.

Be it enacted by the Governor, Council, and Assembly, as follows:

1. Section 132 of an Act passed during the present Session, entitled "An Act to amend and consolidate the Acts relating to Mines and Minerals," is hereby repealed.

For Acts of 1892, c. 3; see note 1 to sec. 117.

ACTS OF 1893, CHAPTER 2.

An Act to Amend Chapter 1 of the Acts of 1892, entitled
"The Mines and Minerals Act, 1892."

Passed the 28th day of April, A.D. 1893.

Be it enacted by the Governor, Council, and Assembly, as follows:

1. In case any mortgage, conveyance, judgment, attachment, bill of sale, lien or encumbrance, covering or affecting any area or areas, shall have been duly registered or recorded in the office of the Commissioner of Mines, as provided by section 143 of "The Mines and Minerals Act, 1892," the holder or holders of any lease or license to

search, or prospecting license, of or upon, or in respect of any such area or areas, shall not be at liberty to surrender the same, except by and with the consent in writing of each and every the holder or holders of such mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance as aforesaid, and any surrender by the holder or holders of such lease, license to search or prospecting license, without such consent in writing, shall be absolutely null and void.

2. Sub-section (a) of section 18 of the Act hereby amended is repealed, and the following sub-section is substituted therefor. (For substitution see s. 18, s.-s. (a).)

3. Sub-section (f) of section 108 is hereby repealed, and the following sub-section is substituted therefor. (For substitution, see s. 108, s.-s. (f).)

4. In case a lease of any area shall become forfeitable for non-working, any person may apply on behalf of the holder of such lease to have such lease brought under rental agreement, as provided in section 18 or section 108, as the case may be, and may make the annual payment in advance required by such section, and such lease shall not be forfeitable for non-working for the period of six months thereafter, and the holder of such lease may at any time within such period of six months enter into a rental agreement as required by such section.

5. If the holder of any lease of a gold area or a gold and silver area shall at any time fail to make the annual payment in advance provided for by section 18, sub-section (a) of the said Act, as amended by this Act, and in case any mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance shall have been duly registered or recorded in the office of the Commissioner of Mines, covering or affecting the areas included in such lease, the Commissioner or Deputy Commissioner shall forthwith give notice of such default in the manner provided by said sub-section (a) so amended as aforesaid, not only to the lessee or lessees, but may also give such notice to the holders of each such mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, and each such holder shall have the right within said period of thirty days after the posting of such notice to his address to make such payment, and in default of such payment being made within said period of thirty days, then the said lease shall forthwith become forfeited.

6. In case the holder of any lease referred to in said section 18 shall fail to avail himself of the provisions of the said chapter so far as relates to the annual payment in advance and the refund thereof, as provided for by sub-section (c) of said section 18, the holder of any mortgage, conveyance, judgment, attachment, bill of sale, lien or encumbrance covering or affecting the areas included in any such lease, may enter into a duplicate agreement in writing with the Commissioner for the making of such annual payments, and thereafter so long as such annual payment in advance shall be duly made by any person having any interest in or lien upon such areas, whether a party to such agreement or not, the said lease shall not be forfeitable for non-working.

7. If the holder of any lease of an area or areas other than a gold area or a gold and silver area, shall at any time fail to make the annual payment in advance provided for by section 108, sub-section (f) of the said Act, as amended by this Act, and in case any mortgage, conveyance, judgment, attachment, bill of sale, lien or encumbrance, shall have been duly registered or recorded in the office of the Commissioner of Mines, covering or affecting the areas included in such lease, the Commissioner or Deputy Commissioner shall forthwith give notice of such default in the manner provided by said sub-section (f), so amended as aforesaid, not only to the lessee or lessees, but also may give such notice to the holder of each such mortgage, conveyance, judgment, attachment, bill of sale, lien or encumbrance, and each such holder shall have the right within thirty days after the posting of such notice to make such payment, and in default of such payment being made within said period of thirty days, then the said lease shall forthwith become forfeited.

8. In case the holder of any lease referred to in said section 108, shall fail to avail himself of the provisions of the said chapter, so far as relates to the annual payment in advance, and the refund thereof as provided for by sub-section (f) of said section 108, the holder of any mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, covering or affecting the areas included in any such lease, may enter into a duplicate agreement in writing with the Commissioner for the making of such annual payments, and thereafter so long as such annual payments in advance shall be duly made by any person having any interest in or lien upon such areas, whether a party to such agreement or not, the said lease shall not be forfeitable for non-working.

9. In case any mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, shall be duly registered or recorded in the office of the Commissioner of Mines, and shall bind, or affect, or constitute a lien upon any area or areas included in any lease, every such mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, shall to the same extent, and in the same manner, bind, affect and constitute a lien upon the area or areas included in any renewal or renewals of such lease.

10. This section was repealed by Statutes of 1897, c. 4, s. 5, and the following substituted therefor:

The Commissioner or Deputy Commissioner shall not be required to send notice of default of payment to the holder or holders of any mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, unless previous to such default such holder or holders shall have given written notice to the Commissioner or Deputy Commissioner of his or their post office addresses. The Commissioner or Deputy Commissioner shall register post office addresses of all applicants for leases or licenses as furnished under the provisions of section 152 of chapter 1 of Acts of 1892, and such address shall be deemed the address of the holder of any lease or license, unless and until the holder of such lease or license shall have registered a changed address, and notice sent to any lessee or lessees at the address given at date of application for such lease shall be sufficient unless some change in such address has been duly registered with the Commissioner or Deputy Commissioner.

11. Where the docket of a judgment or a copy of a writ of attachment, with a description of the property appraised and a copy of the appraisement, shall have been duly lodged in the office of the Commissioner of Public Works and Mines, the said judgment and attachment shall thereupon be deemed registered in the said office, and all the interests of the judgment debtor in any mining areas in his name in the said office shall thereupon become bound by the said judgment and said attachment.

12. Section 115 of chapter 1 of the Act of 1892 is hereby amended by adding thereto the following proviso: "Provided, however, that this section does not apply to or affect any action or suit commenced previously to the 30th day of April, 1892; and does not and shall not affect in any manner the rights of the parties to any such action or suit; and does not and shall not apply to or affect any license to search, license to work or lease, the validity of which shall have been or shall be in dispute in any such action or

suit, but every such action or suit shall be heard and determined to all intents and purposes in the same manner as if this section had not been enacted."

13. Section 155 of chapter 1 of the Acts of 1892, known as "The Mines and Minerals Act, 1892," is hereby amended by adding at the end of said section the following clauses: (For added subsection see section 155.)

14. From and after the passing of this Act no person holding the office of Provincial Secretary, Attorney-General, Commissioner of Public Works and Mines, or any office or employment under the Provincial Government or under any department thereof the duties of which are usually performed in the building at Halifax known as the Provincial Building, shall, while holding such office or employment, directly or indirectly, apply to the Department of Mines for any mining license or mining lease, or act as agent for any other person in the making of any such application. No application made by any person in violation of this section shall be received or acted upon by the Commissioner of Works and Mines, and any person violating the provisions of this section shall forfeit his office or employment, and be liable to a penalty of four hundred dollars, to be recovered as a private debt by any person suing therefor. This section shall not in any way affect the right of any such person now holding a license or licenses to search to apply by himself or by his assignee or agent for lease or leases or renewals thereof of the area or areas and right or rights included in such license or licenses, or of any portion of such area or areas and right or rights, and this Act shall not in any way affect the title or titles of any person or persons, company or companies, now outstanding, and shall not affect any suit pending at the time of the passing of this Act.

ACTS OF 1893—CHAPTER 3.

An Act to amend Chapter 1 of the Acts of 1892, "The Mines and Minerals Act, 1892."

Passed the 28th day of April, A.D. 1893.

Be it enacted by the Governor, Council, and Assembly, as follows :—

1. Section 10 of chapter 1 of the Acts of 1892 is hereby amended by striking out the word "true" in the third line thereof, and substituting therefor the word "magnetic."

2. Section 11 of the said chapter is hereby amended by adding the following words thereto: (For added words see Acts, 1892, c. 1, s. 11.)

3. Section 17 of the said chapter is hereby amended by inserting between the words "areas" and "shall" in the first line thereof the following words:—"and for prospecting licenses to search for gold and silver hereafter."

4. All applications for prospecting licenses to search for gold and silver that may have been received by the Deputy Commissioner at Sherbrooke, for areas within the limits of the proclaimed gold district of Sherbrooke, in the County of Guysborough, previously to the passage of this Act, are hereby declared to be valid, and all applications for prospecting licenses to search for gold and silver, covering areas in the said district, that have been received at the office of the Commissioner of Mines at Halifax heretofore, are hereby also declared to be valid.

5. Section 112 of said chapter is hereby repealed.

6. Section 120 of said chapter is hereby amended by striking out the figures "126" in the twenty-fifth line thereof, and substituting the figures "122" therefor.

7. Section 107 of said chapter is hereby amended by striking out the word "refuse" in the eighth line thereof, and substituting the word "issue" therefor.

8. All Acts or parts of Acts that are inconsistent with this Act are hereby repealed.

ACTS OF 1897 - CHAPTER 4.

An Act to amend the Law respecting Mines and Minerals.

NOTE.—The title of this Act is referred to in Act 1897, c. 5, s. 1, as "An Act respecting Mines and Minerals."

Passed the 1st day of March, A.D. 1897.

Be it enacted by the Governor, Council, and Assembly, as follows:—

1. This section, as originally enacted, was repealed by Statutes, 1897, c. 5, s. 1, and the following substituted therefor:

"All leases of mines of gold and of gold and silver, and of mines other than gold and silver, applied for within two months from the

17th day of April, 1889, and which were issued under the provisions of section 8, of chapter 23, of the Acts of 1889, without containing a provision in respect to the payment of rental and its refund under certain conditions, shall be read and construed as if said leases had been issued containing said rental clause, and, in the case of all such leases not heretofore surrendered, lapsed or forfeited, on the next anniversary of their date notice of the payment of rental being due shall be sent to each of such lessees. Provided, however, that this section shall not apply to any lease which prior to the first day of February, 1897, had been called in question before the Supreme Court."

In re H. V. Weir (not yet reported), application was made by H. V. Weir on the 15th October, 1896, for a certain gold mining area, and refused by the Commissioner on the ground that "he deemed, and decided that the areas therein enumerated were covered by lease 788. That lease was granted on 6th May, 1890—we do not know the date of the application on which it was granted, nor is it material as will appear hereafter. On the 17th April, 1889, the Legislature passed an Act repealing section 16, chapter 7, and making new provisions which were to be inserted in all leases granted after that Act came in force. By one of the sections (8) the sections which contained the new provisions were not to come in force for two months after the passage of the Act, which would be 17th June, 1889. The lease although not granted until 6th May, 1890, nearly a year after the statute of 1889 came in force, was, for some unknown reason, probably the Commissioner's mistake, issued in the old form under the repealed section 16. In my opinion the Commissioner was not then empowered to grant such a lease, as the statute then in force provided for lease containing different terms as will be found on reference to section 7, Act 1889. But, while this is true, it is not open to a person in the position of the applicant to question its validity in such a proceeding as the present. The Commissioner alone could challenge its validity in a proper proceeding for that purpose. This is made clear in *Osborne v. Morgan*, (1888) 13 App. Cas. 227, where Lord Watson says at page 225: "The right to interfere with the possession of a tenant under a former lease independently of the lessor, and in derogation of his rights, is not one of the natural incidents to a mere license, which carries no legal or equitable interest at all. An *ex facie* regular lease, followed by possession, and impeachable only upon such extrinsic grounds as are alleged in the appellants' declaration, is, as between the parties to it, not void, but voidable; and, the lessees being willing to continue in possession and to comply with its stipulations, it is the privilege of the lessor to determine whether they shall be permitted to do so or not." In that case the Commissioner had made a lease within two years from the date of the proclamation of the gold fields, whereas the statute provided that no leases should be granted within the period, and it was attacked by parties who were licensees, whereas here the applicant has no status whatever. The result is that the lease in question was at the most voidable at the suit of the Crown, not void, and therefore

the areas applied for were not vacant or open for application. Apparently the Commissioner's mistake in issuing such a lease was discovered, and in the year 1897 two different statutes were passed to validate leases so irregularly granted, that is to say chapters 4 & 5, Acts of 1897. Chapter 5, section 1, enacts that "all leases applied for within two months from the 17th day of April, 1889, and which were issued under the provisions of section 8, chapter 23, of the Acts of 1889, without containing a provision in respect to the payment of rental and its refund under certain conditions, shall be read and construed as if said leases had been issued containing said rental clause, and, in case of all such leases not heretofore surrendered, lapsed, or forfeited, on the next anniversary of their date notice of the payment of rental being due shall be sent to each of the lessees. Provided, however, that the section shall not apply to any lease which prior to the 1st day of February, 1897, has been called in question before the Supreme Court."

Now the first point to determine is whether this particular lease comes under the proviso. It is not directly "called in question," if by that is meant that such proceedings have been taken before the Court as will bind or directly attack the validity of the lease as against the lessees in this proceeding, but incidentally, of course, the lease is called in question, as the Commissioner could only grant this application on the assumption that the lease is void. But by section 4, chapter 4 (Acts of 1897), "No lease of mines of gold, etc., now outstanding or hereafter to be issued, shall be attacked or called in question in any Court, unless within one year from the date of the issue thereof, and all leases issued by the Commissioner of Public Works and Mines shall, after one year from the date of the issue thereof, be indefeasible and not forfeitable except for non-payment of rental or royalty, or in case of leases now outstanding not under rental for non-working, etc." The result of this legislation here is that (1) this lease has not been called in question within a year from the date of its issue, and (2) that not coming under chapter 5, section 1 (Acts of 1897), by reason of the proviso, it is not under the rental clauses, and is only forfeitable for non-working. The Commissioner's certificate is silent on this, but as he has decided it was in force at the time of the application it must be presumed that the work has been done, at any rate in the face of the decision we cannot assume that it was not done. It is therefore clear, if section 4, chapter 4 (Acts of 1897), applies to this lease, it is still in force, as the application was rightly refused. We are bound to construe it as applicable as there is no exception, and in other sections of the two Acts there are exceptions. If it had been intended to exclude leases under the working clauses when called in question prior to February 1st, 1897, of course it would have been so expressed, but section 4, chapter 4 (Acts of 1897), enacts they shall be non-forfeitable except for non-working, whatever may have been the intention of the person who drafted these chapters. Leases containing the "working clauses" so called, even though issued after the Act of 1889 came in force, are now by statute made valid and non-forfeitable except for non-working. As already pointed out we have no evidence that this condition was not fulfilled by the lessees. Certainly the Court must have so regarded the matter, and the Court will

not assume in favour of forfeiture which has not been proved, even if it were competent to do so on the present application.

This appeal should therefore be dismissed, but as it was not opposed there will be no costs."

Ritchie, J., said: "It is clear, I think, that the Legislature did not contemplate that such leases were to be construed as containing the rental clauses, because it provided by section 1 of chapter 4 of the Acts of 1897, as amended by chapter 5 of the same year, that leases applied for within two months after 17th April, 1889, and issued without containing the rental clauses, should be read and construed as if they contained them, legislation entirely inconsistent with the idea that such leases before 1897 were to be legally construed as if they contained these clauses.

A proviso in the section I have referred to excludes the particular lease the subject of this enquiry from its operation. It is equally clear too, that the Legislature did not consider such leases issued without the rental clauses void, but recognized them as existing leases; it did not even think it necessary to legalize or confirm them, but merely by legislation added clauses which it considered the leases should have contained when they were issued.

If the lease in question is to be recognized as an outstanding lease in 1897, of which I have little doubt, section 4 of chapter 4 of the Acts of 1897 has made it indefensible and forfeitable only for non-working. But assuming this lease had been improvidently issued and was not in accordance with the provisions of the Act, so that it might have been set aside before the Act of 1897 after a due investigation at which the lessee had an opportunity of being heard, there is, in my opinion, no law which requires the Commissioner of Mines, or even enables him, on his own mere motion without investigation or notice to the lessee, to set aside or disregard a lease, because he thinks it has not been issued in accordance with the terms of the Statute or for the alleged breaches of conditions which the lease does not contain."

Henry, J., said: "I understand the decision of the Supreme Court of Canada in the case of *Temple et al. v. Atty.-General et al.*, (1897) 29 N. S. R. 288; 27 S. C. R. 355; as delivered by Mr. Justice Sedgwick, to determine, as did that of Mr. Justice Graham in this Court, that as to mines of gold and of gold and silver, the effect of section 8 of chapter 23 of the Act of 1889 was to suspend for two months the coming into force of the whole of the preceding part of the Act.

It was contended at the argument of this appeal that some of the language used by Mr. Justice Sedgwick showed that the decision as to the suspension of the Act was limited to cases where the applications were made before the date of the passing of the Act. This is not so. The first part of the decision determines that section one—the main section—was suspended. That being so it is clear that the language of the latter part was used not to limit the subject matter of the provision for suspension, but only as a probable explanation or account of the reason for postponing the introduction of the new by-law provided for by the Act.

In the present cases it appears that the applications were made on the 4th of May and the 10th of June, 1889, respectively. When these applica-

tions were made section 16, R. S., chapter 7, 'The Mines and Minerals Act,' was still in force, not having yet been affected by chapter 23, Acts of 1889.

The applications, therefore, were made under the old Act, and the rights and liabilities in respect of these applications were those which that Act provided for. The applicants became entitled to leases under that Act. They applied for no other kind of lease. They could not have done so because there was no law under which they could apply for any other.

Although the leases in question are of later date than the date 17th June, upon which the Act of 1889 came into force, they expressly cover, as they should, a term commencing upon the days of the applications respectively. They establish the relationship of lessor and lessee between the parties from the dates of the applications onward. They are no more and no less than the formal expression of the rights of the parties, the Crown and the lessees, which arose immediately upon the making of the applications—the only rights which so far as the periods from the dates of the applications up to the coming into force of the Act are concerned, could arise under the existing law.

During these periods the applicants had a right to receive old leases. They have since received old leases, the terms of which by their own express provisions commenced to run before the new law came into existence. It cannot injuriously affect these lessees that the leases to which they had a right previous to the 17th June were not delivered to them until after that date. There is nothing in the Act, or in any decision upon it, to lead to such a result.

As to the language of section 7, providing that 'All leases of mines of gold, etc., shall contain the provisions respecting the payment of rental, etc.,' I do not regard it as having been intended to enact that every lease issued after the coming into force of the Act must, without regard to the date of the applications contain the new terms therein provided for. I understand it to apply, as it ought to apply, to leases applied for under the new law, and not to leases not only applied for under the old law but covering terms commencing before the change in the law took place.

Section 10 provides that 'All leases granted under this Act shall be for the term of twenty years.' It cannot be said that the leases in question were 'granted' under the new Act. They were granted under the Act under which the applications for the grants were made.

I am of the opinion that these leases are valid as being the leases to which the applicants were entitled."

2. [Except in the case of leases called in question before the Supreme Court prior to the 1st day of February, 1897]¹ all leases for gold and silver, or for mines other than gold and silver, shall, if issued within thirty days of being applied for, bear date of the day on which said leases were applied for, provided that in case a longer interval than thirty days elapse between the application and the issuing of signature or issuing by the Commissioner, and rental shall become payable on the days of the dates of such leases, and leases shall in all

cases be subject to forfeiture twelve months from the date of the last payment of rental, and such rental shall be payable in advance on the day of the date of such lease.

¹ Inserted by Acts 1897, c. 5, s. 2.

3. The Commissioner of Public Works and Mines shall have power, without additional fee, to accept surrender of two or more leases for gold, or gold and silver, and issue a lease for the whole area embraced by such surrendered leases. The Commissioner may exercise his discretion as to the date of the new lease, regard being had to the dates of the leases so surrendered.

4. No lease of mines of gold and silver, or mines other than gold and silver, now outstanding or hereafter to be issued, shall be attacked or called in question in any Court, unless within one year from the date of the issue thereof, and all leases issued by the Commissioner of Public Works and Mines shall, after one year from the date of issue thereof, be indefeasible and not forfeitable except for non-payment of rental or royalty, or in case of leases now outstanding not under rental for non-working. Provided that if it be shown to the satisfaction of the Attorney-General that said leases were obtained by fraud or misrepresentation he may issue a fiat to the party aggrieved to bring an action in the Supreme Court to test such question of fraud or misrepresentation at a period later than one year from the date of issue of said lease.

5. Section 10 of chapter 2 of the Acts of 1893 is hereby repealed, and the following substituted:—

The Commissioner or Deputy Commissioner shall not be required to send notice of default of payment to the holder or holders of any mortgage, conveyance, judgment, attachment, bill of sale, lien or other encumbrance, unless previous to such default such holder or holders shall have given written notice to the Commissioner or Deputy Commissioner of his or their post office addresses. The Commissioner or Deputy Commissioner shall register post office addresses of all applicants for leases or licenses as furnished under the provisions of section 152 of chapter 1 of Acts of 1892, and such address shall be deemed the address of the holder of any lease or license, unless and until the holder of such lease or license shall have registered a changed address, and notice sent to any lessee or lessees at the address given at date of application for such lease shall be sufficient, unless some change in such address has been duly registered with the Commissioner or Deputy Commissioner.

6. If any licensed mill owner shall fail to make the return required under section 51, he shall be liable to a fine not exceeding fifty dollars, to be recovered in the name of the Commissioner in any Court of competent jurisdiction. Any licensed mill owner not making the return required under section 52, in the manner and within the time required for making a return under section 57, shall be liable to a similar fine, recoverable in a similar manner.

7. Section 143 of chapter 1 of the Acts of 1892 is hereby amended by striking out the following words at the end of said section: "The fee to be paid to the Commissioner for the registration of any document of title under this chapter shall be fifty cents."

ACTS OF 1897—CHAPTER 5.

An Act to amend an Act of the present session, entitled "An Act Respecting Mines and Minerals."

Passed the 1st day of March, A.D. 1897.

Be it enacted by the Governor, Council, and Assembly, as follows:—

1. Section 1 of said Act is hereby repealed and the following substituted:

"All leases of mines of gold and of gold and silver, and of mines other than gold and silver, applied for within two months from the seventeenth day of April, 1889, and which were issued under the provisions of section 8, of chapter 23, of the Acts of 1889, without containing a provision in respect to the payment of rental and its refund under certain conditions, shall be read and construed as if said leases had been issued containing said rental clause, and in the case of all such leases not heretofore surrendered, lapsed or forfeited, on the next anniversary of their date notice of the payment of rental being due shall be sent to each of such lessees. Provided, however, that this section shall not apply to any lease which prior to the first day of February, 1897, had been called in question before the Supreme Court."

2. Section 2 is hereby amended by prefixing thereto the words: "Except in the case of leases called in question before the Supreme Court prior to the first day of February, 1897."

ACTS OF 1898—CHAPTER 26.

An Act to amend Chapter 1 of the Acts of 1892, entitled, "An Act to amend and consolidate the Acts relating to Mines and Minerals."

Passed the 11th day of March, A.D. 1898.

Be it enacted by the Governor, Council, and Assembly, as follows :

1. The Commissioner of Public Works and Mines may, upon application in writing, grant an area of five hundred gold areas of class number one, viz., 250 by 150 feet in size for the purpose of alluvial gold mining only, upon the following conditions :—

2. The application shall describe the ground applied for with reasonable certainty, and not cover any ground at the time of application under lease or license for the purpose of prospecting for or mining any minerals the property of the Crown.

3. The application shall be accompanied by a fee of ten cents for each and every area included therein.

4. The license so granted upon the filing of the bond prescribed for licenses for prospecting for gold and silver by the Act hereby amended shall be for alluvial mining only, and for the space of three months out of the period between March 31st and December 1st of any one year, and no such prospecting license shall be accepted between December 1st of any year and March 31st of the following year.

5. In order to obtain a right to apply for an extended possession of the ground so licensed, the licensee must expend in digging, removing and otherwise testing and working the soil on said license, money amounting in all to not less than an amount representing forty cents for each and every area contained in said license.

6. The books of account, pay-rolls, etc., of such licensee, in respect to such expenditures, shall be open to the inspection and examination of the Inspector of Mines or such person as he may appoint, who shall also have access at all times thereto, as well as to the operations conducted by said licensee and to the results of said work.

7. The said license of five hundred areas shall not in width be less than seven hundred and fifty feet.

8. The licensee having, before the expiration of said period of three months, satisfied the commissioner that such expenditure has been made, and having paid any royalty due on gold extracted, may, before the expiration of such period, apply in writing for a prospecting license over the ground included in such license, amounting to five hundred areas and no less, and pay a fee of two hundred and fifty dollars. The Commissioner, upon being satisfied that such expenditure has been made and royalty paid, may within fourteen days after the expiration of such period of three months, grant such applicant a prospecting license over said five hundred areas. If such license be not granted within such period of fourteen days after the expiration of the said period of three months, then the ground shall thereupon be vacant and open to application. The prospecting license for said five hundred areas for twelve months, if granted, shall be subject to the provisions of the Act hereby amended in the same manner as if it were a prospecting license of one hundred areas or less, except that its length may exceed twice its width, provided that said width shall not be less than seven hundred and fifty feet.

9. During the term of said license and for fourteen days thereafter, no application shall be received for licenses or leases to prospect for, or to mine gold or gold and silver, or minerals other than gold and silver over the area so granted for alluvial mining.

10. All statements of work done, of gold extracted, and other papers and writings relating to said prospecting license, filed in the office of the Commissioner of Public Works and Mines, shall be open to the inspection of the public, and in case no such application is made for a prospecting license of such area of five hundred areas by such licensee before the end of the term of three months, or if the Commissioner of Public Works and Mines does not see fit to grant such prospecting license over the ground covered by such license to prospect for alluvial gold mining, then at the end of fourteen days after the expiration of the term of three months of such license to prospect for alluvial gold mining, the ground covered by such license for three months shall be open to application for licenses and leases to prospect and mine gold and silver and minerals other than gold and silver, subject to the provisions of the Acts hereby amended.

11. The holder of such license to prospect for alluvial gold mining shall, before the end of the term of such license, make return of the gold obtained and pay royalty thereon as one of the conditions upon which an extension of title to the ground so prospected may be obtained.

ACTS OF 1898—CHAPTER 27.

An Act to amend the Mines and Minerals Act of 1892, in respect to Prospecting Licenses and Leases for Gold.

Section 1.—Schedule E of said Chapter 1, amended.

Be it enacted by the Governor, Council, and Assembly, as follows:

1. “The Mines and Minerals Act, 1892,” and all Acts amending said Act, are hereby amended as follows:

On and after the first day of July, 1898, no application for areas for prospecting licenses or leases for gold or gold and silver shall be accepted for a less number than six adjoining areas.

(a) Provided that whenever there is not space enough for an application for six adjoining areas owing to applications already made, the Commissioner may receive an application for prospecting license or lease for such less number of areas, and such application may in length exceed twice its width, and provided the following provisions shall apply in the case of prospecting licenses in force on the said first day of July, 1898, viz.: In the case of a prospecting license for six adjoining areas or more, no application for a lease of ground contained in such prospecting license, shall be received for a less number of areas than six adjoining areas. In the case of a prospecting license for less than six areas no application shall be received for a lease except for all the areas contained in such prospecting license.

(b) Also provided, that any application for prospecting license made under the provisions of this Act shall not in length exceed twice its width, and shall in all respects be subject to the provisions of “The Mines and Minerals Act, 1892,” and all Acts in amendment thereof.

2. Section 14 of “The Mines and Minerals Act, 1892,” is hereby amended by substituting the word “magnetic” for the word “true” therein.

3. All Acts or parts of Acts that are inconsistent with this Act are hereby repealed.

ACTS OF 1898—CHAPTER 28.

Passed the 11th day of March, A.D. 1898.

Be it enacted by the Governor, Council, and Assembly, as follows :

“The Mines and Minerals Act, 1892,” and all Acts in amendment thereof, are hereby amended as follows:

1. The Governor in Council shall have power notwithstanding any provisions in said Act and its amendments, to make rules and regulations for issuing prospecting licenses and leases for mining gold and silver in lands where copper, lead, iron, tin and precious stones may occur, subject to the provisions in said Act respecting royalties, and to fix the terms upon which such licenses and leases may be granted, provided that such terms shall not be lower or less onerous than those at present provided for in said Act.

2. All licenses and leases issued by the Commissioner of Mines under such rules and regulations, shall be as valid and binding as if issued by him under the said Act.

3. All Acts and parts of Acts inconsistent with this Act are hereby repealed.

REGULATIONS OF MINES.

CHAP. 8, OF REVISED STATUTES, FIFTH SERIES, WITH AMENDING ACTS.

1. This chapter may be legally cited, when desirable, as “The Mines Regulation Chapter.”

2. In this chapter, unless the context otherwise requires, the term “mine” includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, railways and sidings both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane of and belonging to the mine.

The term “shaft” includes pit.

The term “inclined plane” includes slope.

The term "plan" includes a map and section or sections, and a correct copy or tracing of any original plan as so defined.

The term "Commissioner" means the Commissioner of Public Works and Mines.

The term "Inspector" used in this chapter means an Inspector of Mines appointed under the laws of this Province relating to Mines and Minerals.

The term "Deputy Inspector" used in this chapter means a Deputy Inspector of Mines appointed under the laws of this Province relating to Mines and Minerals, who shall have the same power of inspection as the Inspector, but shall be under his direction.

The term "owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty or rent from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine or any part thereof shall be subject to this chapter in like manner as if he were an owner, but so as not to exempt the owner from any liability.

The term "agent," when used in relation to any mine, means any person having on behalf of the owner care or direction of any mine or any part thereof.

The term "manager," when used in relation to any mine, means the chief officer having the control and daily supervision of the mine.

The term "underground manager," when used in relation to any mine, means the person [next in charge to the manager and having the supervision of the underground workings]. (1) The term "overman," when used in relation to any mine, means the person in charge of any mine, or any portion of a mine, next in charge to the underground manager.

(1) Section 2 is hereby amended by striking out all the words after the word "person" in the forty-fourth line and before the words "the term" in the forty-sixth line, and inserting the following: "Having the daily charge of the underground workings under the control and daily supervision of the manager. See section 2 of chapter 9, Acts of 1891.

The term "boy" means any male person under the age of eighteen years. (2)

(2) The term "shift" shall apply to all workmen and boys, except workmen engaged for the purpose of ventilation, who may go to work in the mine at set divisions of the day. See section 1 of chapter 9, Acts of 1891.

3. If any question arises whether a mine is a mine to which this chapter applies, such question shall be referred to the Commissioner, whose decision thereon shall be final.

EMPLOYMENT OF BOYS.

4. No boy under the age of ten years shall be employed in or about or allowed to be for the purpose of employment in or about any mine below ground or above ground. (3)

(3) Section 4 of said Act is hereby repealed and the following substituted: "No boy under the age of twelve years shall be employed in or about or allowed to be for the purpose of employment in or about any mine below ground or above ground, and no boy of twelve years or over to be hereafter employed for the first time shall be permitted to go to work in or about a mine below or above ground unless he be able to read, write, and to count as far as division and furnish a certificate to that effect from a duly licensed teacher," provided that this section shall not go into operation until one year after the passing of this Act. See section 3 of chapter 9, Acts of 1891.

5. A boy of the age of ten and under the age of twelve years shall not be employed in or allowed to be for the purpose of employment in any mine below ground for more than sixty hours in any one week, or more than ten hours in any one day. (4)

(4) Section 5 is hereby repealed and the following substituted:

"A boy of the age of twelve and under the age of sixteen shall not be employed in, or allowed to be for the purposes of employment in, any mine below or above ground for more than fifty-four hours in any one week, nor more than ten hours in any one day, except in case of accident or emergency." See section 4 of chapter 9, Acts of 1891.

6. For the purpose of the provisions of this chapter with respect to the employment of such boys in a mine below ground, the following regulations shall have effect; that is to say:

- (1) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface.
- (2) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

7. Where there is a shaft or an inclined plane or level in any mine, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up or down or along such shaft, plane or level by means of any engine, windlass or gin driven or worked by steam or any mechanical power, or by an animal, or by manual labour, a person shall not be allowed to have charge of such engine, windlass or gin, or of any part of the machinery, ropes, chains or tackle connected therewith, unless he is a male of at least eighteen years of age. (1)

Where the engine, windlass, or gin is worked by an animal, the person under whose direction the driver of the animal acts shall for the purposes of this section be deemed to be the person in charge of the engine, windlass or gin; but such driver shall not be under twelve years of age. (2) This clause shall not apply to operations known in the mines as counter or back balances.

(1) Section 7 is hereby amended by adding after the words "of at least eighteen years of age" the following words: "Nor shall any person have charge of such engine, windlass or other hoisting apparatus, unless he has undergone an examination by a person or board to be appointed by the Governor in Council, and holds a certificate of competency based on said examination." Certificates of service may be granted until January 1st, 1892, and this section shall not go into operation till that date.

(2) Said section 7 to be further amended by substituting the word "fourteen" for "twelve" in sixteenth line.

See sections 5 and 6 of chapter 9, Acts of 1891.

8. If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, any provision of this chapter with respect to the employment of boys, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this chapter; and in case of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this chapter, to prevent such contravention or non-compliance.

If it appear that a boy or a person employed about an engine, windlass, or gin was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this chapter, and under the belief in good faith that he was of that age, the owner, agent or manager of the

mine and employer shall be exempted from any penalty, and the parent or guardian shall for such misrepresentation be deemed guilty of an offence against this chapter.

WAGES.

9. No wages shall be paid to any person employed in or about any mine at or within any public house, beer shop, or place for the sale of any spirits, beer, wine, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section, shall be guilty of an offence against this chapter; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

10. Where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them, such persons shall, if the majority of such persons so desire, and unless the mine is exempted by the Commissioner, be paid according to the weight of the mineral gotten by them, and such mineral shall be truly weighed accordingly.

Provided always, that nothing herein contained shall preclude the owner, agent or manager of the mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, cars, or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer or by the person immediately employed by him, such deduction being determined by the banksman or weigher or check-weigher, if there be one.

If any person contravenes or fails to comply with or permits any person to contravene or fail to comply with this section, he shall be guilty of an offence against this chapter; and in the event of any contravention of or non-compliance with this section by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this chapter; unless he prove that he had taken

all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention and non-compliance.

11. The persons who are employed in a mine and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this chapter referred to as a "check-weigher") at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed. The check-weigher shall be one of the persons employed either in the mine at which he is so stationed or in another mine belonging to the owner of that mine. (1) He shall have every facility afforded to him to take a correct account of the weighing for the persons by whom he is so stationed; (2) and if in any mine proper facilities are not afforded to the check-weigher as required by this section, the owner, agent and manager of such mine shall each be guilty of an offence against this chapter, unless he prove that he had taken all reasonable means by enforcing to the best of his power the provisions of this section to prevent such contravention or non-compliance.

(1) Section 10 is hereby amended as follows: "All the words after 'employed by him,' line seventeen, to be struck out and the following substituted":—

"Such deductions being determined in such special mode as may be agreed upon between the owner, agent, or manager, of the mine on the one hand, and the persons employed in the mine, on the other, or by some person appointed on that behalf by the owner, agent, or manager, and by a person appointed by the workmen (such person may be the check-weigher, if any check-weigher has been appointed), or in case of difference by a third person mutually agreed upon by the parties to the dispute, or in default of agreement by the Commissioner of Mines." See section 7 of chapter 9, Acts of 1891.

(1 & 2) Section 11. That all the words after "so stationed" in seventh line, and before "he shall have every facility" in tenth line be deleted, and that after the word "stationed" in twelfth line, and between the words "and if any" in the same line, the following words shall be inserted: "Including facilities for examining and testing the weighing machine and checking and taring of tubs where necessary."

See section 17 of chapter 9, Acts of 1891.

The check-weigher shall not be authorized in any way to impede or interrupt the working of the mine or to interfere with the weighing, but shall be authorized only to take such account as aforesaid; and the absence of the check-weigher shall not be a reason for interrupting or delaying such weighing.

If the owner, agent or manager of the mine desires the removal of a check-weigher, on the ground that such check-weigher has impeded or interrupted the working of the mine or interfered with the weighing, or has otherwise misconducted himself, he may complain to any justice of the peace of the county in which the mine is situated, who, if of opinion that the owner, agent or manager shows sufficient *prima facie* ground in writing for the removal of such check-weigher, shall by summons call upon the check-weigher to appear at a certain time and place therein mentioned. Such summons and a copy of the said complaint shall be served on the check-weigher by any constable of the county at least five days before the return day of said summons. In default of appearance of said check-weigher to answer the complaint, proof of the service of the said summons shall be furnished by the said constable in the same way as in ordinary civil suits before a justice of the peace. On the hearing of the case the justice shall hear the parties, and if he think that at the hearing sufficient ground is shown by the owner, agent or manager to justify the removal of the check-weigher, or in case of the non-appearance of the said check-weigher, and on proof of the service of the summons as aforesaid, he shall make a summary order for his removal, and the check-weigher shall thereupon be removed, but without prejudice to the stationing of another check-weigher in his place.

The justice may in every case make such order as to the costs of the proceedings as he thinks just, and execution may issue for the recovery of the same as in suits for debts before a justice of the peace.

The following to be added to section 11: "It shall be lawful for the owner, agent or manager of any mine where a check-weigher has been appointed, by a majority ascertained by ballot of the persons employed in a mine and paid according to the weight of mineral gotten, to retain the agreed contributions toward salary of the check-weighers of the persons so paid, and from all persons from time to time so employed and so paid, notwithstanding the provisions of the Act relating to stoppages, chapter 56 of the Acts of 1890."

See sections 28 of chapter 9, Acts of 1891.

SINGLE SHAFTS.

12. The owner, agent or manager of a mine shall not employ any person in such mine or permit any person to be in such mine for the purpose of employment therein unless there are in communication with every seam of such mine for the time being at work at least two shafts or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means

of ingress and egress are available to the persons employed in such seam, whether such two shafts or outlets belong to the same mine or one or more of them belong to another mine, and unless there is a communication of not less than four feet wide and three feet high between such two shafts or outlets, and unless there is at each of such two shafts or outlets or upon the works belonging to the mine, and either in actual use or available for use within a reasonable time, proper apparatus for raising or lowering persons at each such shaft or outlet.

Provided that such separation shall not be deemed incomplete by reason only that openings through the strata between the two shafts or outlets have been made for temporary purposes of ventilation, drainage or otherwise; or in the case of mines where inflammable gas has not been found within the preceding twelve months for the same purposes, although not temporary.

Every owner, agent or manager of a mine who acts in contravention of or fails to comply with this section shall be guilty of an offence against this chapter.

The Supreme Court or any Judge thereof, whether any other proceedings have or have not been taken, may, upon the application of the Attorney-General, prohibit by injunction the working of any mine in which any person is employed or is permitted to be for the purpose of employment in contravention of this section, and may award such costs in the matter of the injunction as the Court or Judge thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this chapter.

Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner, agent or manager of such mine not less than twenty days before the application is made.

13. The provisions of this chapter with respect to shafts or outlets shall not apply in the following cases, that is to say:

- (1) In the case either of opening a new mine for the purpose of searching for or proving minerals, or of any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed below ground at any one time in the workings in connection with each shaft or outlet in such new mine or such working;
- (2) In the case of any proved mine so long as it is exempted in writing by the Commissioner on the ground either—

- (a) That the mine is not a coal mine, or a mine with inflammable gas, that sufficient provision has been made against danger from other causes than explosions of gas by using stone, brick or iron in the place of wood for the lining of the shaft and the construction of the midwall; or
- (b) That the workings in any seam of a mine have reached the boundary of the property or other extremity of the mineral field of which such seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of such seam; and so long as there are not employed below ground at any one time in the workings in connection with the shaft or outlet in any such mine more than twenty persons, or (if the mine is not a coal mine or mine with inflammable gas) than such larger number of persons as may for the time being be allowed by the Commissioner:
- (3) In the case of any mine, one of the shafts or outlets of which has become by reason of some accident unavailable for the use of the persons employed in the mine, so long as such mine is exempted in writing by the Commissioner, and the conditions on which such exemption is granted are duly observed.

14. If a written representation be made to the Commissioner by the owner or agent of a mine not having at the passing of this chapter two shafts or outlets, that an extension of time for providing an additional shaft or outlet ought to be granted to him, the question as to whether such exemption or extension of time ought to be granted shall be decided by the Commissioner.

RETURNS, NOTICES, AND ABANDONMENT.

15. For procuring mining returns—

- (1) The lessee of every mine leased from the Crown shall send to the office of the Commissioner a correct return of all the minerals wrought in such mine, as is required by chapter 7, "Of Mines and Minerals," and such other information and at the stated times specified in such chapter:
- (2) And on or before the thirty-first day of January in every year the owner, agent or manager of every mine to which

this chapter applies, other than of every mine leased from the Crown, shall send to the office of the Commissioner a correct return specifying with respect to the year ending on the preceding thirty-first day of December the quantity of coal, iron ore or other mineral wrought in such mine, and the number of persons ordinarily employed in or about such mine below ground and above ground, distinguishing the persons and labour below ground and above ground and the different classes of the persons so employed:

- (3) The owner, agent, manager or occupier of every mine shall once a year if required by the Inspector send to him a return of facts relating to the mode and description of means of ventilation, a description of the upcast and downcast shafts, of the length and sectional area of the airways, the number of splits and quantity of fresh air in cubic feet per minute, and the average total quantity of air in cubic feet per minute in his mine.

The returns shall be in such forms as may be from time to time prescribed by the Commissioner, who shall from time to time, on application, furnish forms for the purpose of such returns.

Every owner, agent or manager of a mine who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against this chapter.

16. Where in or about any mine, whether above or below ground, either

- (1) Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder (1) or of any steam boiler; or

(1, 2, 3) Sub-section 1 of section 16 to be amended by inserting after the word "powder" and before the word "or," the words "or any explosive." Sub-section 2 of said section 16 to be amended by inserting after the word "Commissioner" in eighth line and before the word "and" in same line the words "and deputy inspector for the district," and the same words to be inserted after the word "Commissioner" on first line, page 17.

See sections 18 and 19, chapter 9, Acts of 1891.

- (2) Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever;

the owner, agent, or manager of the mine shall within twenty-four

hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the office of the Commissioner, (2) and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively, and as soon after as possible, and before the end of each year a return of facts relating to such accident or explosion in the form given in the Schedule to this chapter.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the office of the Commissioner (3) within twenty-four hours after such death comes to the knowledge of the owner, agent or manager

(2, 3) See 1, 2, 3, page 11.

Every owner, agent or manager who fails to act in compliance with this section shall be guilty of an offence against this chapter.

17. In any case,

- (1) Where any change occurs in the name of, or in the name of the owner, agent, or manager of, any mine, or in the officers of any incorporated company which is the owner of a mine not exempted from compliance with this clause by the Commissioner;
- (2) And in any of the following cases of coal mines, namely,
 - (a) Where any working is commenced for the purpose of opening a mine;
 - (b) Where a shaft of any mine is abandoned or the working thereof discontinued; or
 - (c) Where the working of a mine is recommenced after an abandonment or discontinuance for a period exceeding two months;

the owner, agent or manager of such mine shall give notice thereof at the office of the Commissioner within two months after such commencement, abandonment, discontinuance, recommencement or change; and if such notice be not given, the owner, agent or manager shall be guilty of an offence against this chapter.

18. Where any mine is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurs, the owner thereof, and every other person interested in the

mineral of such mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents.

Provided that—

- (1) Subject to any contract to the contrary the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect;
- (2) Nothing in this section shall exempt any person from any liability under any other chapter or Act, or otherwise.

If any person fail to act in conformity with this section, he shall be guilty of an offence against this chapter.

19. Where any mine is abandoned, the owner of such mine at the time of such abandonment shall, within three months after such abandonment, send to the office of the Commissioner an accurate plan on a scale of not less than a scale of two chains to one inch, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Commissioner.

Provided that this section shall not apply to a mine (which is not a mine of coal, or stratified ironstone, of shale, or of fireclay) in which less than twelve persons have ordinarily been employed below ground; unless the owner, his agent or manager has been specially required by the Commissioner to keep a plan of his mine.

Every person who fails to comply with this section shall be guilty of an offence against this chapter.

INSPECTION.

20. The Inspector shall have power to do all or any of the following things; namely,

- (1) To make such examination and enquiry as may be necessary to ascertain whether the provisions of this chapter relating to matters above ground or below ground are complied with in the case of any mine;
- (2) To enter, inspect and examine any mine and every part thereof at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine;

- (3) To examine into and make enquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;
- (4) To exercise such other powers as may be necessary for carrying this chapter into effect.

Every person who wilfully obstructs the Inspector in the execution of his duty under this chapter, and every owner, agent and manager of a mine who refuses or neglects to furnish to the Inspector the means necessary for making any entry, inspection, examination or enquiry under this chapter in relation to such mine, shall be guilty of an offence against this chapter.

21. If in any respect (which is not provided against by any express provision of this chapter, or by any special rule) the Inspector find any mine, or any part thereof, or any matter, thing or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person or to the waste or misuse of any property of or leased from the Crown, the Inspector may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in such notice the particulars in which he considers such mine or any part thereof, or any matter, thing or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied the Inspector shall also report the same to the Commissioner.

If the owner, agent or manager of the mine object to remedy the matter complained of in the notice, he may, within ten days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to the Commissioner, who shall thereupon hear such evidence upon the matter as may be produced before him, and together with one arbitrator appointed by the Inspector and one arbitrator appointed by the owner, agent or manager objecting, shall determine the same; and the award of the Commissioner with one of the arbitrators shall be final.

Five days' notice of the time and place where the Commissioner will hear such evidence shall be given to the parties interested.

If the owner, agent or manager fail to comply either with the requisition of the notice where no objection is sent within the time

aforesaid, or with the decision of the Commissioner and arbitrators within five days after the expiration of the time for objection or the time of making of the decision of the Commissioner and arbitrators (as the case may be), he shall be guilty of an offence against this chapter, and the notice and decision shall respectively be deemed to be written notice of such offence:

Provided that the Commissioner, if satisfied that the owner, agent or manager has taken active measures for complying with the notice or decision, but has not with reasonable diligence been able to complete the works, may extend the time of five days (above specified) to such time as he shall deem proper, and if the works are completed within such time no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

22. The owner, agent or manager of every mine of coal, of stratified ironstone, of shale, or of fireclay, shall keep in the office at the mine an accurate plan of the workings of such mine, showing the workings up to at least six months previously, also the owner, agent or manager of all other mines in which more than twelve persons are ordinarily employed below ground, also of all other mines when specially requested to do so by the Commissioner.

The owner, agent or manager of the mine shall produce to the Inspector at the mine such plan, and shall if requested by the Inspector mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the Inspector to examine the same, and shall furnish to the Inspector a correct copy of such plan when requested by the Inspector.

The owner, agent or manager on or before the first day of April of each year shall furnish to the Inspector a correct plan or tracing (not before furnished) of the workings up to first day of January then last past.

If the owner, agent or manager of any mine fail to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully refuses to furnish such copy, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection or inaccuracy, he shall be guilty of an offence against this chapter; and further, the Inspector may by notice in

writing (whether a penalty for such offence has or has not been inflicted) require the owner, agent or manager to cause an accurate plan, such as is prescribed by this section, to be made within reasonable time at the expense of the owner of the mine, on a scale of not less than two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

If the owner, agent or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the Inspector to make or cause to be made such plan he shall be guilty of an offence against this chapter.

23. The Commissioner may at any time direct the Inspector to make a special report with respect to any accident in a mine, which accident has caused loss of life or personal injury to any person, and in such case the Inspector shall have power to summon any person or persons before him, and such persons to examine under oath if necessary, and shall reduce their evidence into writing and have the same signed by them, and the Commissioner shall cause such report to be made public at such time and in such manner as he thinks expedient.

CORONERS.

24. With respect to coroners' inquests on the bodies of persons whose deaths may have been caused by explosions or accidents in mines, the following provisions shall have effect:

- (1) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident of which notice is required by this chapter to be given to the Commissioner, the coroner shall adjourn such inquest when the majority of the jury think it necessary so to adjourn such inquest to enable the Inspector wherever practicable, or some other properly qualified person appointed by the Commissioner, to be present to watch the proceedings; (1)

(1) Sub-section 1 of section 24 is hereby repealed, and the following substituted:—

“ When a coroner holds an inquest on the body of any person whose death may have been caused by an explosion or accident of which notice is required by this chapter to be given to the Commissioner or deputy inspector, the coroner, whenever practicable, shall immediately notify the deputy inspector for the district of his intention to hold such inquest, and in the absence, non-arrival, or non-attendance of the deputy inspec-

tor, the coroner shall adjourn such inquest whenever practicable, to enable the inspector, deputy inspector, or some other properly qualified person appointed by the Commissioner, to be present to watch the proceedings."

See section 20, chapter 9, Acts of 1891.

- (2) The coroner, at least four days before holding the adjourned inquest, shall send to the Commissioner² notice in writing of the time and place of holding such adjourned inquest;

(2) Sub-section 2 of same section to be amended by inserting after the word "Commissioner" the words "or deputy inspector and." See section 21, chapter 9, Acts of 1891.

- (3) The coroner before the adjournment may take evidence to identify the body, and may order the interment thereof;
- (4) The Inspector or such other person so appointed, or a person appointed by the workmen of the colliery at which the accident occurred, shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner.
- (5) Where evidence is given at an inquest at which the Inspector or such other person so appointed is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the Inspector notice in writing of such neglect or default;
- (6) Any person having a personal interest in, or employed in or in the management of, the mine in which the explosion or accident occurred, or any relative of the deceased person upon whose body the inquest is to be held, shall not be qualified to serve on the jury empanelled on the inquest, or to act as coroner therein; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.
- (7) If in the opinion of the Inspector it will lead to a more thorough investigation, and will be more conducive to the ends of justice, he may require the constable or other officer to summon as jurymen not more than three working men

employed at any other colliery than that at which the accident occurred, who shall form part of the jury sworn in such inquest.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this chapter.

RULES.

General Rules.

25. The following general rules shall be observed, so far as is reasonably practicable, in every mine:

- (1) An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, winzes, sumps and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.
- 2) In every mine in which inflammable gas has been found within the preceding twelve months a competent person or persons (1) who shall be appointed for the purpose shall inspect with a safety lamp that part of the mine being or intended to be worked, and the roadways leading thereto, within five hours of the time of each shift commencing work, and if inflammable gas has been found within the preceding three months, then within three hours of the time of commencing work. (2) [And shall make a true report to the manager, underground manager, or overman, at the time in charge of the pit, of the condition thereof as far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe.]

(1) Sub-section 2 of section 25 is amended by inserting after the word "person" in third line, and before the word "who" in the same line, the words "holding certificates as underground managers, overmen, or shot-firers." See section 23, chapter 9, Acts of 1891.

(2) All the words after the words "commencing work" in the eleventh line of sub-section 2 of section 25 to the end of the sub-section are from chapter 6, Acts of 1885.

- (3) In every mine worked for coal or any stratified deposit in which inflammable gas has not been found within the preceding twelve months, then once in every twenty-four hours a competent person or persons who shall be appointed for the purpose shall, within five hours before time for commencing work in any part of the mine, inspect that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof so far as ventilation is concerned; and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe.
 - (4) All entrances to any place in a mine worked for coal or any stratified deposit not in actual course of working and extension, shall be properly fenced across the whole width of such entrance, so as to prevent persons inadvertently entering the same.
 - (5) A station or stations shall be appointed at the entrance to a mine worked for coal or any stratified deposit, or to the different parts of the same mine, as the case may require, and a workman shall not pass beyond any such station until the mine or part of the mine beyond the same has been inspected and stated to (3) be safe.
- (3) Section 25, sub-section 5 to be amended by inserting after the word "stated" in seventh line, the words "to him to be safe."
- See section 22, chapter 9, of Acts of 1891.
- (6) If at any time it is found by the person for the time being in charge of the mine or any part thereof that by reason of noxious gases prevailing in such mine or such part thereof, or of any cause whatever, the mine or the said part is dangerous, every workman shall be withdrawn from the mine or such part thereof as is so found dangerous, and a competent person who shall be appointed for the purpose shall inspect the mine or such part thereof as is so found dangerous, and if the danger arises from inflammable gas shall inspect the same with a locked safety lamp, and in every case shall make a true report of the condition of such mine or part thereof; and a workman shall not, except in so far as is necessary for enquiring into the cause of danger, or for the removal thereof, or for exploration, be readmitted into the mine, or such part thereof as was so

found dangerous until the same is stated by such report not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be entered by the person making the same.

- (7) In every working approaching any place where there is likely to be an accumulation of explosive gas, no lamp or light other than a locked safety lamp shall be allowed or used; and whenever safety lamps are required by this chapter, or by the special rules made in pursuance of this chapter, to be used, a competent person who shall be appointed for the purpose shall examine every safety lamp immediately before it is taken into the workings for use and ascertain it to be secure and securely locked; and in any part of a mine in which safety lamps are so required to be used they shall not be used until they have been so examined and found secure and securely locked, and shall not without due authority be unlocked; and in the said part of a mine a person shall not, unless he is appointed for the purpose, have in his possession any key or contrivance for opening the lock of any such safety lamp, or any lucifer, match or apparatus of any kind for striking a light (1).

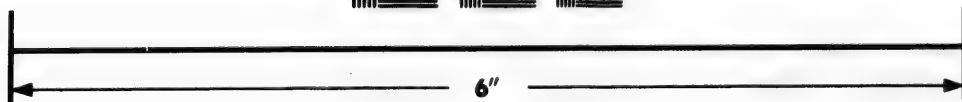
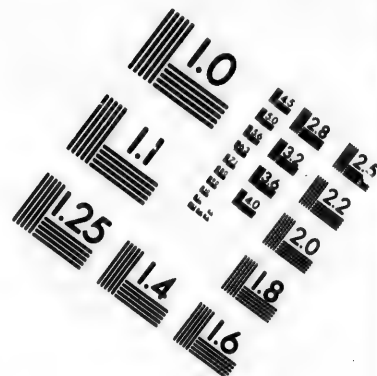
(1) Sub-section 7, section 25, is amended by adding the following words: "In any mine in which more than forty safety lamps are used at one time there shall be a person appointed whose duty it will be to see that the lamps are in good order when given out to the workmen."

See section 24, chapter 9, Acts of 1891.

(8.) Gunpowder or other explosive or inflammable substance shall only be used in the mine underground as follows:¹

- (a.) It shall not be stored in the mine.
- (b.) It shall not be taken into the mine, except in a case or canister containing not more than six pounds.
- (c.) A workman shall not have in use at one time in any one place more than one of such cases or canisters.
- (d.) A charge of powder which has missed fire shall not be unrammed.
- (e.) It shall not be taken into or be in the possession of any person in any mine or district of a mine, and shall not be used except in accordance with the following regulations, during three months after any inflammable gas has been found in any such mine or district of a mine; namely,

- (1.) A competent person who shall be appointed for the purpose shall, immediately before firing the shot, examine the place where it is to be used and the places contiguous thereto, and shall not allow the shot to be fired unless he finds it safe to do so; and a shot shall not be fired except by or under the direction of a competent person who shall be appointed for the purpose;
- (2.) If such inflammable gas issues so freely that it shows a blue cap on the flame of the safety lamp, it shall only be used—
 - (a.) Either in those cases of stone drifts, stone work and sinking of shafts, in which the ventilation is so managed that the return air from the place where the powder is used passes into the main return air course without passing any place in actual course of working; or
 - (b.) When the persons ordinarily employed in the mine are out of the mine or out of the part of the mine where it is used.
 - (f.) Where a mine is divided into separate districts in such manner that each district has an independent intake and return air-way from the main air-course and the main return air-course, the provisions of this rule with respect to gunpowder or other explosive or inflammable substance shall apply to each such district in like manner as if it were a separate mine.
- (1) Sub-section 8 of section 25 is hereby repealed and the following substituted:—
 - (8) Any explosive shall only be used in the mine underground as follows:—
 - (a) It shall not be stored in the mine.
 - (b) It shall not be taken into the mine, except in a case or canister containing not more than six pounds.
 - (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters.
 - (d) It shall not be taken into or be in the possession of any person in any mine or district of a mine, and shall not be used except in accordance with the following regulations, during two months after any inflammable gas in quantity sufficient to show in a safety lamp has been found in three consecutive days in any such mine; namely,
 - (1) Either in those cases of stone work and sinking of shafts in which the ventilation is so managed that the return air from the place



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where the explosive is used passes into the main return air-course without passing any place in actual course of working; or,

(2) When the persons ordinarily employed in the mine are out of the mine or out of the part of the mine where it is used.

(3) Where a mine is divided into separate districts in such manner that each district has an independent intake and return air-way from the main air-course and the main return air-course, the provisions of this rule with respect to explosives shall apply to each such district in like manner as if it were a separate mine.

(c) A competent person or persons shall be employed for the purpose of firing all shots during three months after any inflammable gas has been found in any such mine or district of a mine, or under the provisions of sub-section (d). He shall, before firing any shot, carefully examine the place where it is to be fired and the places adjoining. A shot shall not be fired after the first of January, 1892, except by or under the direction of a competent person appointed for the purpose, and holding an underground manager's, overman's, or shot-firer's certificate.

Provided, however, that if at any time the Inspector of Mines together with any persons experienced in the composition or use of explosives, whom he may associate with himself for the purpose, shall report that any explosive is free from danger, the Lieutenant-Governor may, by Order in Council, determine that the restrictions of sub-section (d) of this section shall not apply to such explosive, and in such case such explosive may be used so long as said Order in Council remains in force.

The Commissioner may upon representation made to him in writing by the owner, agent, or manager, of any mine, that the finding of inflammable gas in three consecutive days, alluded to in this rule, in any such mine is exceptional and that the mine is damp, and not dry or dusty, cause an examination to be made of such mine by the inspector, and may order that the use of any explosive is obligatory under this rule only if inflammable gas is found on two consecutive days in any two consecutive weeks.

See sections 8 and 25, chapter 9, Acts of 1891.

(9.) Where a place is likely to contain a dangerous accumulation of water the working approaching such place shall not exceed eight feet in width or height, and there shall be constantly kept at a sufficient distance, not being less than five yards in advance, at least one bore-hole near the centre of the working and sufficient flank bore-holes on each side.

(10.) Every underground plane on which persons travel which is self-acting or worked by an engine, windlass or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than

twenty yards, with sufficient man holes for places of refuge. (1) [And every back or counterbalance used for raising or lowering coal or other minerals, if exceeding thirty yards in length, unless exempted in writing by the inspector, shall be provided with some proper means of signalling between the lower end and between the entrance of every working place thereon for the time being in work, and the upper end thereof.]

(1) In sub-section 10, the words from the word "refuge" to the end of the sub-section are from chapter 22, Act of 1889.

(11.) Every road on which persons travel underground where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided, at intervals of not more than fifty yards with sufficient man holes or with a space for a place of refuge, which space shall be of sufficient length and of at least three feet in width between the waggons running on the tramroad and the side of such road.

(1) In sub-section 11 of section 25 after the word "provided" in the fourth line and before the word "at" in the same line, insert the words "where there is not standing room of at least two feet," and for the word "fifty" in the fifth line substitute the word "twenty-five."

See section 9, chapter 9, Acts 1891.

An Act to amend chapter 8, Revised Statutes, of the regulation of mines.

1. Sub-section 11, of section 25 of chapter 8 of Revised Statutes, "of the regulation of mines," is hereby amended by adding at the end thereof the words:—"Where the load is drawn by machinery or other mechanical appliances, and there is not standing room of at least two feet, there shall be provided at intervals of not more than fifteen yards, sufficient man-holes, or with a space for a place of refuge, which space shall be of sufficient length and of at least three feet in width between the waggons running on the tramroad and the side of such road. Whenever in the opinion of the inspector the precautions required in this section, so far as they relate to roads over which the produce of the mine is drawn by machinery or other mechanical appliance, are not sufficient for the safety of the men travelling thereon, he may require the owner, agent, or manager of such mine to provide a separate travelling road."

2. Sub-section 22 of section 25 is hereby amended by adding after the words "the shaft" in the last line of the sub-section, the words "or slope." Chapter 10, Acts 1893.

(12.) Every man hole and space for a place of refuge shall be constantly kept clear, (4) and no person shall place anything in a man hole or such space so as to prevent access thereto.

(4) Sub-section 12, of section 25, to be amended by inserting after the words "kept clear" and before the words "and no person" the words "and frequently whitewashed." See s. 10, c. 9, Acts of 1891.

(13.) The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced.

(14.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced; but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations if proper precautions are used.

(15.) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined or otherwise made secure.

(16.) The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing travel or work in any such travelling road or working place which is not so made secure.

(17.) In any mine which is usually entered by means of machinery, a competent person of such age as prescribed by this chapter shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for such purpose during the whole time that any person is below ground in the mine.(1)

(1) To sub-section 17 of section 25 the clause following to be added: "No one shall be appointed for the purpose of this section who has not been examined as to his competency and holds a certificate of the same as provided in section 7 of the Act hereby amended." This section shall not come into operation until January 1st, 1892.

See section 11, chapter 9, Acts of 1891.

(18.) Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft.

(19.) A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by

a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the Inspector.

(20.) A single-linked chain shall not be used for lowering or raising persons in any working shaft or place except for the short coupling chain attached to the cage or load.

(21.) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also if the drum be conical, such other appliances, as may be sufficient to prevent the rope from slipping.

(22.) There shall be attached to every machine worked by steam, water or mechanical power, and used for lowering or raising persons, an adequate brake, and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft.

(23.) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

(24.) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

(25.) A ladder permanently used for the ascent or descent of persons in the mine shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows; and every such ladder shall have substantial platforms at intervals of not more than twenty yards.

(26.) If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses.

(27.) Where one portion of a shaft is used for the ascent and descent of persons by ladders or otherwise, and another portion is used for raising the material gotten in the mine, the first mentioned portion shall be either cased or otherwise securely fenced off from the last mentioned portion, or no person shall be permitted to travel in the shaft when the shaft is working.

(28.) No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, brake, indicator, ladder, platform, steam gauge, water gauge, safety valve or other appliance or thing provided for any mine in compliance with this chapter.

(29.) Every person shall observe such directions with respect to working as may be given to him with a view to comply with this chapter or the special rules hereinafter provided for.

(30.) A competent person or persons who shall be appointed for the purpose shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery and the state of the head-gear, working places, levels, planes, ropes, chains and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein.

(31.) The persons employed in a mine may from time to time appoint two of their number to inspect the mine, at their own cost, and the persons so appointed shall be allowed, once at least in every month, accompanied, if the owner, agent or manager of the mine thinks fit, by himself or one or more of the officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings and machinery, and shall be afforded by the owner, agent and manager and all persons in the mine every facility for the purpose of such inspection, and shall make a true report of the result of such inspection, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this chapter; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine by any person whomsoever being proved, the owner, agent and manager shall each be guilty of an offence against this chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance (1).

(1) The following sub-sections are added to section 25:—

(1st) In any mine, whenever required by the inspector, the coal, during the operation of holding or undercutting, shall be supported by coal or wooden props, under the direction of a person appointed for that purpose. See chapter 20, Acts of 1890.

(2nd) The majority of the workmen at any mine shall have the privilege of appointing a committee, chosen from among themselves, to examine the seat of any accident resulting in death or injury to persons.

(3rd) Where persons are employed underground properly constructed ambulances or stretchers with splints and bandages shall be kept at the colliery ready for immediate use in case of accident.

See sections 12 and 13, chapter 9, Acts of 1891.

Special Rules.

26. The owner, agent or manager of any mine may, if he think fit, transmit to the Inspector for approval by the Commissioner rules (referred to in this chapter as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the Inspector who is Inspector at the time such rules are established, and shall be observed in and about every such mine in the same manner as if they were enacted in this chapter.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this chapter, and also the owner, agent and manager of such mine shall each be guilty of an offence against this chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

27. The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom, may be sent by any of the persons employed in the mine to the Inspector at his address stated in such notice, shall, during not less than two weeks before such rules are transmitted to the Inspector, be posted up in like manner as is provided in this chapter respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall

be sent to the Inspector with the rules signed by the person sending the same.

If the rules are not objected to by the Commissioner within forty days after their receipt by the Inspector, they shall be established. If the owner, agent or manager make any false statement with respect to the posting up of the rules and notices, he shall be guilty of an offence against this chapter.

28. If the Commissioner is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may within forty days after the rules are received by the Inspector, object to the rules, and propose to the owner, agent or manager in writing any modifications in the rules by way either of omission, alteration, substitution or addition.

If the owner, agent or manager do not within twenty days after the modifications proposed by the Commissioner are received by him, object in writing to them, the proposed special rules with such modifications shall be established.

If the owner, agent or manager send his objection in writing within the said twenty days to the Commissioner the matter shall be referred to the Governor in Council; and the date of the receipt of such objection by the Commissioner shall be deemed to be the date of the reference; and the rules shall be established as settled by an order of the Governor in Council.

29. After special rules are established under this chapter in any mine, the owner, agent or manager of such mine may from time to time propose in writing to the Inspector, for the approval of the Commissioner, any amendment of such rules or any new special rules, and the provisions of this chapter with respect to the original special rules shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to the original rules. The Commissioner may from time to time propose in writing to the owner, agent or manager of a mine in which there are no special rules, and to the owner, agent or manager of a mine in which there are special rules, any new special rules, or any amendment to such special rules, and the provision of this chapter with respect to a proposal of the Governor in Council for modifying the special rules transmitted by the owner, agent or manager of a mine shall apply to all such proposed special rules, new special rules, and amendments in like manner, as nearly as may be, as they apply to such proposal.

30. For the purpose of making known the special rules, if any, and the provisions of this chapter, applicable to each class of mines as severally defined by the Commissioner, to all persons employed in and about each mine, an abstract of the chapter applicable to each mine, will be supplied on the application of the owner, agent or manager of the mine by the Commissioner, and which, with an entire copy of the special rules (if any) shall be published as follows:

- (1.) The owner, agent or manager of such mine shall cause such abstract and rules (if any) with the name of the Inspector and the name of the owner, agent or manager appended thereto, to be posted up in legible characters in some conspicuous place at or near the mine where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.
- (2.) The owner, agent or manager shall supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner, agent or manager are paid.
- (3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and the employed.

If any owner, agent or manager fail to act in compliance with this section, he shall be guilty of an offence against this chapter; but the owner or manager shall not be deemed guilty if he prove that he has taken all reasonable means by enforcing the observance of this section, to prevent such non-compliance.

31. Every person who pulls down, injures or defaces any proposed special rules, notice, abstract or special rules, when posted up in pursuance of the provisions of this chapter with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this chapter.

32. The Inspector shall, when required, certify a copy which is shown to his satisfaction to be a true copy, of any special rules which for the time being are established under this chapter in any mine; and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules, and of the fact that they are

duly established under this chapter, and have been signed by the Inspector.

PENALTIES.

33. Every person employed in or about a mine other than an owner, agent or manager, who is guilty of any act or omission which in the case of an owner, agent or manager would be an offence against this chapter, shall be deemed to be guilty of an offence against this chapter.

34. Every person who is guilty of an offence against this chapter shall be liable to a penalty not exceeding, if he is an owner, agent or manager, eighty dollars, and if he is any other person eight dollars for each offence; and if the Inspector has given written notice of any such offence, to a further penalty not exceeding five dollars for every day after such notice that such offence continues to be committed (1).

(1) Sections 34 and 35 are hereby repealed, and the following substituted:—

(34) Every owner, agent, manager, underground manager, or overman, who is guilty of an offence against this chapter, shall be liable to a penalty not exceeding eighty dollars.

If such offence consists in a violation of this chapter committed or continued after notice in writing given by the Inspector, a further penalty of five dollars for each violation, or for each day that such violation continues after such notice, shall be imposed.

Every person other than an owner, agent, manager, underground manager, or overman, who is guilty of an offence against this chapter, shall be liable to a penalty of eight dollars for each offence.

Every person who may be guilty of a violation of any regulation made and published by the Board of Examiners appointed under the authority of section 8, chapter 7, of the Revised Statutes "Of Mines and Minerals," shall, for every day such violation shall continue, incur the penalties mentioned in the preceding part of this section.

Every person who may be guilty of a violation of any regulation made and published by the Board of Examiners appointed under the authority of section 8, chapter 7, of the Revised Statutes, "Of Mines and Minerals," shall, for every day such violation shall continue, incur the penalties mentioned in the preceding part of this section.

35. No prosecution or other proceeding shall be instituted against the owner, agent or manager of a mine to which this chapter

applies for an offence under this chapter which can be prosecuted before a justice's court, except by the Inspector, or with the consent in writing of the Commissioner; and in case of any offence of which the owner, agent, or manager is not guilty, if he prove that he had taken all reasonable means to prevent the commission thereof, the Inspector shall not institute any prosecution against such owner, agent or manager, if satisfied that he had taken such reasonable means as aforesaid (1).

(1) (35) No prosecution or other proceeding shall be instituted against the owner, agent, manager, underground manager, or overman of a mine to which this chapter applies, for an offence against this chapter which can be prosecuted before one or two justices of the peace, or a stipendiary magistrate, except by the Inspector, or with the consent in writing of the Commissioner, or by some person appointed by the Commissioner, or by some person employed having the written consent of at least twelve persons so employed. In case a prosecution or other proceeding is instituted against any owner, agent, manager, underground manager, or overman for an offence against this chapter, such owner, agent, manager, underground manager, or overman shall be entitled to be discharged from such prosecution or other proceeding if he prove to the satisfaction of the justices or Court having cognizance of the same that he had taken all reasonable means to prevent the commission of such offence.

See section 26, chapter 9, Acts of 1891.

36. All penalties under this chapter, and all moneys and costs by this chapter directed to be recovered as penalties, may be sued for and recovered in the name of the Inspector in the same manner and in the same courts of law in which ordinary private debts of a like amount are sued for and recovered.

37. Any complaint or suit made or brought in pursuance of this chapter shall be made or brought within six months from the time when the matter of such complaint or suit came to the knowledge of the prosecutor.

38. The owner, agent or manager may if he think fit be sworn and examined as an ordinary witness in the case where he is charged in respect of a contravention or non-compliance by another person.

39. Where a penalty is imposed under this chapter for neglecting to send a notice of any explosion or accident or for any offence against this chapter which has occasioned loss of life or personal injury, the Commissioner may (if he think fit) direct such penalty to be paid to or distributed among the persons injured and the rela-

tives of any persons whose death may have been occasioned by such explosion, accident or offence, or among some of them.

Provided that such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence.

Save as aforesaid, all penalties imposed in pursuance of this chapter, shall be paid on receipt of the same into the Provincial Treasury.

MANAGERS, OVERMEN, AND BOARD OF EXAMINERS.

40. Every coal mine to which this chapter applies shall, after the first of January (1890) (1) be under the control and supervision of a manager, and the owner or agent of every such mine shall nominate himself or some other person to be the manager of such mine, and shall send written notice to the Commissioner of the name and address of such manager (2).

(1) Date 1885 changed to 1890. See chapter 10, Acts of 1886.

(2) Sub-section to be added to section 40: "And in no mine to which this chapter applies shall any person not now employed as a miner be 'given the picks' to work as a miner unless he has been employed in a mine, in some capacity, for the space of one year. No one shall be given charge of a 'working face' in a mine who has not worked previously in a mine for the space of two years, nor shall any one now a miner be employed after the first of January, to mine coal who is not a holder of a certificate of service; and no one not now a miner shall be 'given the picks' to work as a miner, until granted a certificate of competency after examination by the Board of Examiners appointed for the purpose of granting certificates as managers, overmen, or shot-firers, or by an examining board to be hereafter appointed, who shall have power to frame laws and conditions under which said certificates shall be granted.

See section 15, chapter 9, Acts of 1891.

41. The underground workings of every coal mine to which this chapter applies shall be under the daily charge of an underground manager and overman holding certificates under this chapter.

42. A person shall not be qualified to be a manager, underground manager or overman unless he be the holder of a certificate under this chapter.

43. If any coal mine to which this chapter applies is worked for more than fourteen days without there being such a manager,

underground manager or overman as is required by this chapter, the owner and agent of such mine shall each be guilty of an offence against this chapter.

Provided that the owner [and agent] of (1) such mine shall not be guilty of an offence against this chapter if he proves that he had taken all [reasonable] means by the enforcement of this section to prevent the mine being worked in contravention thereof (2).

(1, 2) Section amended by inserting the words "and agent of" in the first line after the word "owner," and by the insertion of the word "reasonable" after the word "all" in the third line. See section 4, chapter 6, Acts of 1885.

If for any reason no cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of such mine may appoint any person holding a certificate as underground manager under this chapter to be manager for a period not exceeding two months, or such longer period as may elapse before such person has an opportunity of obtaining, by examination, a certificate as manager under this chapter, and shall send to the Commissioner a written notice of the name and address of such manager, and of the reason of his appointment.

44. A mine in which less than thirty persons are generally employed underground, or of which the average daily output does not exceed twenty-five tons, shall be exempt from the provisions of this chapter so far as relates to the appointment of a manager, unless the Inspector, by notice in writing served on the owner or agent, requires the same to be under the control of a manager; but the operations below ground shall be under the charge of persons holding certificates as underground managers and overmen under this chapter (3).

(3) Section 44 is hereby repealed and the following substituted:—

"A mine in which less than thirty persons are generally employed underground shall be exempt from the provisions of this chapter so far as relates to the appointment of a manager, unless the Inspector by notice in writing served on the owner, agent, or manager, requires the same to be under the control of a manager; but the operations underground shall be under the charge of persons holding certificates as underground managers, or overmen, under this chapter, unless permission be given by the commissioner that the operations underground may be under the charge of one such person."

See section 16, chapter 9, Acts of 1891.

45. All certificates for managers, underground managers and overmen shall be issued by the Commissioner upon the report of the

Board of Examiners appointed under the provisions of the law of Mines and Minerals.

46. The Board of Examiners shall draw up rules for the guidance of their proceedings, and shall conduct examinations for granting certificates of competency under this chapter, and may from time to time make, alter and revoke rules for the conduct of such examinations and for determining the qualifications of applicants; so, however, that in every such examination, regard shall be had to such knowledge as is necessary for the practical working of coal mines in this Province, and for the determination of the qualifications of applicants for certificates of service as underground managers and overmen [and for the determination of the eligibility of holders of certificates of competency or service granted by an English Secretary of State or by any foreign government to receive equivalent certificates under this chapter,] (1) and shall from time to time report to the Commissioner the names of the persons qualified to receive certificates, and shall do such other things as are necessary for the proper discharge of their duties under this Act, and the Governor in Council shall have power at any time to alter and revoke any rules made by the Board of Examiners.

(1) Section 46 to be amended by striking out all the words after the words "and overmen" in eleventh line, and before the words "and shall from time to time" in fifteenth line.

See section 26, chapter 9, Acts of 1891.

47. The fees and travelling expenses to be paid to the Board of Examiners, and the fees to be paid by applicants for certificates, shall be determined by the Governor in Council.

48. A register of the holders of certificates under this chapter shall be kept at the office of the Commissioner by such person and in such manner as he may from time to time direct.

49. Certificates of service as manager for the purposes of this chapter may in the discretion of the Commissioner be issued by him to every person who satisfies the Board of Examiners that he has at any time within five years before the passing of this chapter for a period not less than two years acted in the capacity of a manager of a coal mine (2).

(2) Sections 49 and 50 are hereby repealed and the following substituted for section 50:—

"Persons holding certificates of competency granted by an English Secretary of State or other properly constituted authority in Great

Britain may, upon passing the regular examination provided for in this chapter, be granted a certificate as underground manager or overman, but previous to the first meeting of said Board of Examiners the said certificate, upon first being approved of by the Inspector of Mines, shall be valid." See section 27, chapter 9, Acts of 1891.

50. Persons holding certificates of service or competency granted by an English Secretary of State, or certificates of similar tenor granted by similar authority in any other country, may apply for corresponding certificates under this chapter, and such certificates shall be granted by the Commissioner upon the recommendation of the Board of Examiners.

51. A certificate of service shall have the same effect only in the colliery for which it was granted for the purposes of this chapter as a certificate of competency granted under this chapter (1).

(1) Section 51. See section 5, chapter 6, Acts of 1885, repealing former section and substituting this.

52. If at any time representation is made to the Commissioner by the Inspector or any other person that any manager, underground manager or overman holding a certificate under this chapter is by reason of incompetency, [drunkenness] (2) or gross negligence, unfit to discharge his duty, or has been convicted of an offence against this chapter, the Commissioner may if he think fit enquire into the conduct of such manager, underground manager or overman; and with respect to such enquiry the following provisions shall have effect:

(2) The word "drunkenness" inserted. See section 6, chapter 6, Acts of 1885.

(a) The enquiry shall be public, and shall be held at such place as the Commissioner may direct.

(b) The Commissioner shall, before the commencement of the enquiry, furnish the person into whose conduct the enquiry is to be made with a statement of the case upon which the enquiry is instituted.

(c) The person into whose conduct the enquiry is to be held, may attend the enquiry by himself, his attorney or agent, and may, if he think fit, be sworn and examined as an ordinary witness in the case.

(d) The Commissioner shall have power to cancel or suspend the certificate of the person into whose conduct the enquiry has been

made if he find that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this chapter, unfit to discharge his duty.

(e) The Commissioner may, if he think fit, require the person into whose conduct the enquiry is to be made, to deliver up his certificate, and if such person fail without sufficient cause to the satisfaction of the Commissioner to comply with such requisition, he shall be guilty of an offence against this chapter. The Commissioner shall hold the certificate so delivered up until the conclusion of the enquiry, and shall then either restore, cancel or suspend the same according to his judgment in the case.

(f) The Commissioner may also by summons under his hand require the attendance of all such persons as he thinks fit to call before him and examine for the purpose of the enquiry, and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on a subpoena before a Court of Record.

(g) The Commissioner may make such order as he thinks fit respecting the costs and expenses of the enquiry, and such order shall on the application of any party entitled to the benefit of the same, be enforced by any Court of summary jurisdiction as if such costs and expenses were a penalty imposed by such Court.

(h) When a certificate is cancelled or suspended in pursuance of this chapter, the Commissioner shall cause such cancellation or suspension to be recorded in the register of holders of certificates.

53. The Commissioner may at any time, if it is shown to him to be just so to do, renew or restore on such terms as he thinks fit any certificate which has been cancelled or suspended in pursuance of this chapter.

54. Whenever any person proves to the satisfaction of the Commissioner that he has, without fault on his part, lost or been deprived of any certificate previously granted to him under this chapter, the Commissioner shall cause a copy of the certificate to which the applicant appears by the register to be entitled, to be made out and certified by the person who keeps the register and delivered to the applicant; and every copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate (1).

(1) An Act to amend chapter 9 of the Acts of 1891, entitled an Act to amend chapter 8, Revised Statutes, "Of the Regulation of Mines." Chapter 4, 1892.

1. The Commissioner may, upon the recommendation of the Inspector of Mines, within twelve months after the passing of this Act, grant a certificate as manager to any person not at present holding such certificate under provisions of the Act hereby amended, who may at any time prior to the 30th day of April, A. D. 1892, have acted in the capacity of manager of a coal mine in this Province for the space of two years, or have had such practical experience in the working and direction of coal mines as may be considered equivalent to such employment as manager.

2. The Governor in Council may at any time direct that the Board of Examiners appointed for granting certificates to underground managers and overmen, shall also hold examinations for granting certificates of competency as managers, and make such rules and regulations as may be necessary for carrying out the provisions of the Act in this respect.

3. All Acts and parts of Acts at variance with this Act are hereby repealed.

MISCELLANEOUS.

55. In the working of coal and other minerals in submarine areas:

- (1) No submarine seam of coal or stratified deposit of other mineral shall be wrought under a less cover than one hundred and eighty feet of solid measures: Provided that the owner or lessee of any such area may drive passage-ways to win the mineral to be wrought under a less cover than one hundred and eighty feet, but not under less than one hundred feet of solid measures.
- (2) A barrier of the mineral wrought of not less than fifty yards, twenty-five yards on both sides of the boundary lines of every lease, shall be left unwrought between the workings of every submarine seam;
- (3) Where there is less than five hundred feet of solid measures overlying the seam or stratified deposit wrought, the workings of every such submarine area shall be laid off in districts of an area not greater than half of one square mile, and the barrier enclosing each separate district shall not be less than thirty yards thick, and shall not be pierced by more than three passage-ways having a sectional area not greater than six feet by six feet.
- (4) No district shall have its length when parallel to the general trend of the adjoining shore greater than one mile.

- (5) A proposed system of working the mineral in each submarine area shall before work is commenced be submitted to and approved of by the Inspector; and no change shall be made in such approved system without the written sanction of the Inspector.

The opening of a new level or lift in a mine already working in a submarine area shall be deemed the commencement of a new winning in the meaning of this clause.

(2) An Act to amend chapter 8, Revised Statutes, "Of the Regulation of Mines," as amended by section 1 of chapter 4 of the Acts of 1892. Chapter 14, Acts of 1895.

1. The Commissioner may, upon the recommendation of the Inspector of Mines, within six months after the passing of this Act, grant a certificate as manager to any person not at present holding such certificate under the provisions of the Act hereby amended, who may at any time prior to the 30th day of April, A. D. 1892, have acted in the capacity of manager of a coal mine in this Province for the space of two years, or have had such practical experience in the working and direction of coal mines as may be considered equivalent to such employment as manager.

2. All Acts or parts of Acts that are inconsistent with this Act are hereby repealed.

The owner, agent or manager of every mine to which this section applies, who transgresses or fails to comply with any provision of this section, shall each be liable to a penalty, not exceeding one thousand dollars, and if the offence complained of is continued or repeated after a written notice has been given by the Inspector to such owner, agent or manager of any such offence having been committed, the Supreme Court or a Judge thereof, whether any other proceedings have or have not been taken, may upon application by the Attorney-General, prohibit by injunction the working of such mine.

56. All coal, iron ore, or other mineral extracted from mines leased by the Crown, on which royalty is payable, shall be weighed at the mine. The overrun allowed for rough weighing shall not exceed the true weight by one and a half per cent.

A competent person shall be appointed weigher by the owner or agent, who shall enter in a book specially kept for the purpose the weight of every weighing, and shall make a true report to the office at the mine of the weighings so made by him; provided always that it shall not be necessary to weigh every car load or tub of coals;

but the Inspector may agree with the manager, owner or agent of any mine as to the weight by the gauge or average weight of such car loads or tubs; provided, however, that in no case shall a less quantity than every tenth car load or tub be so weighed as aforesaid. Every person who fails to comply with the provisions of this section shall be guilty of an offence against this chapter.

57. All notices under this chapter, shall be in writing or print, or partly in writing or partly in print; and all notices and documents required by this chapter to be served or sent by or to the Commissioner or Inspector, may be either delivered personally or served or sent by post by a prepaid registered letter; and if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

58. The special rules which are in force in any mine under the sanction of an Inspector appointed under the Act entitled, "An Act to consolidate the Statutes relating to Mines and Minerals," shall continue to be the special rules in such mine until special rules are established for such mine under this chapter, and while they so continue, shall be of the same force as if they were established under this chapter (1).

(1) Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26 and 27 of chapter 9 of Acts of 1891, apply only to coal mines.

See section 29, chapter 9, Acts of 1891.

For Forms referred to in this Act see Appendix II.

CHAPTER XVIII.

BRITISH COLUMBIA.

- I. An Act relating to Gold and other minerals excepting Coal, cited as the "**Mineral Act.**"
 - II. An Act relating to Placer Mines, cited as the "**Placer Mining Act.**"
 - III. An Act for securing the safety and good health of workmen, engaged in or about the Metalliferous Mines in the Province of British Columbia, cited as the "**Inspection of Metalliferous Mines Act.**"
 - IV. An Act to encourage Coal Mining, cited as the "**Coal Mines Act.**"
 - V. An Act to make regulations with respect to Coal Mines, cited as the "**Coal Mines Regulation Act.**"
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REVISED STATUTES OF BRITISH COLUMBIA (1897).

An Act relating to Gold and other minerals excepting Coal (as amended by "The Mineral Act Amendment Act, 1898").

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

- 1. This Act may be cited as the "Mineral Act," 1896, c. 34, s. 1.

Interpretation.

- 2. In the construction of this Act the following expressions shall have the following meanings respectively, unless inconsistent with the context:—

"Mine"¹ shall mean any place and in which any vein or lode, or rock in place, shall be mined for gold or other minerals, precious or base, except coal:

¹ Derived from Revised Laws, 1871, No. 90, s. 2; but identical with 1884, 47 Vict. c. 10, s. 1.

"Mineral"² shall mean all valuable deposits of gold, silver, platinum, iridium, or any of the platinum group of metals, mercury, lead, copper, iron, tin, zinc, nickel, aluminum, antimony, arsenic, barium, bismuth, boron, bromine, cadmium, chromium, cobalt, iodine, magnesium, manganese, molybdenum, phosphorous, plumbago, potassium, sodium, strontium, sulphur (or any combination of the aforementioned elements with themselves or with any other elements), asbestos, emery, mica, and mineral pigments:

² Derived from 1884, 47 Vict. c. 10, s. 61; but in an abbreviated form, it is identical with 1894, 57 Vict. c. 32, s. 2, s.-s. (2), part.

Limestone, marble, clay, or any building stone³ shall not be considered as minerals within the meaning of this Act:

³ Derived from 1894, 57 Vict. c. 32, s. 2, s.-s. (2), part. The words "when mined for building purposes" were struck out by the "Mineral Act Amendment Act, 1898," s. 2.

"Rock in place,"⁴ shall be deemed to mean and include mineral, not necessarily in a vein or lode, that is, when discovered in the same place or position in which it was originally formed or deposited, as distinguished from loose fragmentary or broken rock or float which, by decomposition or erosion of the rocks, is found in wash, loose earth, gravel or sand:

⁴ "Rock in place" reads as follows in 1894, 57 V. c. 32, s. 2, s.-s. (2): "Rock in place" shall mean all rock in place bearing valuable deposits of mineral within the meaning of this Act," and appears in its present form for the first time in 1897.

"Rock in place" is the *in situ* of the geologist. A vein or lode is necessarily "in place." The condition of being "in place" is one of its essential attributes. Mineral substances in veins, or lodes, are not always found in quartz. Sometimes the vein material is composed of the same character of rock as the inclosing walls. The nature of the occurrence of mineral being in the form of impregnations, penetrating the country rock, or the mineral may be but a replacement of the original rocks.

Petroleum is said to be "in place" when it occupies the undisturbed position in the earth between the inclosing rocks, where it was placed by natural processes; and so with subterranean salt water: *Williamson v. Jones*, 39 W. Va. 231, 257.

"The words 'rock in place' are satisfied by rock *in situ*, bearing valuable deposits of mineral, although not lying between defined walls, or in a vein or ledge:" *N. & F. S. Ry. Co. v. Jerry*, (1897) 5 B. C. R. 396.

"Valuable deposits of mineral,"⁵ shall be deemed to mean and include mineral "in place" in appreciable quantity, having a present or prospective value sufficient to justify exploration:

⁵ "Valuable deposits of mineral," original.

"Vein," or "lode,"⁶ Whenever either of these terms is used in this Act, "rock in place" shall be deemed to be included:

⁶ Derived from and identical with 1894, 57 Vict. c. 32, s. 2, s.-s. (2), part.

"Mineral claim,"⁷ shall mean the personal right of property or interest in any mine:

⁷ Derived from and identical with 1871, Revised Laws, No. 90, s. 2, omitting the word "mineral."

"Mining property,"⁸ shall include every mineral claim, ditch, mill-site, or water right used for mining purposes, and all other things belonging to a mine or used in the working thereof:

⁸ Derived from and substantially identical with 1871, Revised Laws, No. 90, s. 2.

"Legal post,"⁹ shall mean a stake standing not less than four feet above the ground, and squared or faced on four sides for at least one foot from the top, and each side so squared or faced shall measure at least four inches on its face so far as squared or faced, and any stump or tree cut off and squared or faced to the above height and size: Provided when the survey is made the centre of the tree or stump where it enters the ground shall be taken as the point to or from which measurement shall be made:

⁹ Identical with—omitting proviso—1894, 57 V. c. 32, s. 2. The proviso is original.

"Location line,"¹⁰ shall be the straight line between posts numbers one and two:

¹⁰ Original.

"Mill-site,"¹ shall mean a plot of ground located, as defined by this Act, for the purpose of erecting thereon any machinery or other works for transporting, crushing, reducing, or sampling ores, or for the transmission of power for working mines:

¹ Derived from and identical with 1894, 57 Vict. c. 32, s. 2, part.

"Free miner,"² shall mean a person or joint stock company, or foreign company, named in and lawfully possessed of a valid existing free miner's certificate, and no other:

² Derived from 1871, Revised Laws, No. 90, s. 2, part. Consolidated in 1888, Rev. Stat. c. 82, s. 2, part; omitting in each of these "or joint stock company, or foreign company, named in"; but is identical with 1894, 57 V. c. 32, s. 2, part.

"Record," "register," and "registration,"³ shall have the same meaning, and shall mean an entry in some official book kept for that purpose:

³ Derived from 1871, Rev. Laws, No. 90, s. 2, part, and almost identical.

"Full interest,"⁴ shall mean any mineral claim of the full size, or one of several shares into which a mineral claim shall be equally divided:

⁴ Almost identical with 1882, 45 Vict. c. 8, s. 1, part. [See definition of word "interest," 1872, 35 V. c. 14, s. 1, part.]

"Cause,"⁵ shall include any suit or action:

⁵ Derived from 1882, 45 Vict. c. 8, s. 1, part.

"Judgment,"⁶ shall include "order" or "decree":

⁶ Derived from 1882, 45 V. c. 8, s. 1.

"Real estate,"⁷ shall mean any mineral land in fee simple under this or any Act relating to gold mines, or to minerals other than coal:

⁷ "Real estate," derived from and identical with 1882, 45 V. c. 8, s. 1, part.

"Joint stock company,"⁸ shall mean any company for mining purposes:

⁸ Derived from 1882, 45 V. c. 8. The sub-sections are original.

- (a) Incorporated under the "Companies' Act, 1897," or any Act repealed thereby; or
- (b) Registered as a foreign company under any Act repealed by the "Companies' Act, 1897"; or
- (c) Licensed or registered as an extra-Provincial company under the "Companies' Act, 1897"; or
- (d) Incorporated by any special Act.

1897, c. 28, s. 2.

PART I.

Free Miners and their Privileges.

3. *Every person over, but not under, eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a free miner, and shall be considered a free miner, upon taking out a free miner's certificate. A minor who shall become a free miner shall, as regards his mining property and liabilities contracted in connection therewith, be treated as of full age. A free miner's certificate issued to a joint stock company shall be issued in its corporate name. A free miner's certificate shall not be transferable. 1896, c. 34, s. 3.

^o Derived from and substantially the same down to word "age" on 6th line, 1871, Rev. Laws, No. 90, s. 18; 1891, c. 25, s. 3.

Osburn v. Morgan, (1888) 13 App. Cas. 227. In an action in the Supreme Court of Queensland by the holders of "miners' rights," issued to them under the Gold Fields Act, 1874, and regulations made thereunder, to set aside the defendants' mining leases, also thereunder granted, on the ground (1) that they had been granted, contrary to section 11, within two years from the proclamation of the gold field within which the areas were contained; (2) that the formalities prescribed by the regulation had not been observed by the defendants when applying therefor.

Held, that neither under the Act nor otherwise had the plaintiff any right to interfere with the lessee's possession. Section 9 gave them no rights whatever as against lands let by the Crown, and no title to try the validity of Crown leases relating thereto.

Lord Watson. (234) It does not seem to admit of doubt that the Crown would have a good title to challenge the validity of these two leases upon the first ground advanced by the appellants, either by means of a writ of intrusion or by an information in Chancery. (235) The right to interfere with the position of a tenant under a former lease, independently of the lessor and in derogation of his right, is not one of the natural incidents of a mere license, which carries no legal or equitable interest in the soil. (236) Lands let by the Crown for gold mining purposes, whether before or after the proclamation of a gold field, are not Crown lands within the meaning of 1874, and, against these, section 9 gives no right whatever to the holder of a miner's license.

4. ¹ A free miner's certificate may be granted to a free miner for one or more years, to run from the date thereof, or from the expiration of the applicant's then existing certificate, and to a joint stock company for the period ending on the 30th day of June after the issue of the certificate next ensuing, upon the payment therefor of the fees set out in the Schedule of Fees to this Act. Only one

person or one joint stock company shall be named therein. 1896, c. 34, s. 4, and 1897, c. 2, s. 161.

¹ Almost identical with 1871, Rev. Laws, No. 90, s. 20, except that this section provides for issuance of certificate for one or three years, at the rate of \$5 for one year, or \$15 for three; and also provides for 3 days' grace to renew certificate. Continued in 1884, 47 Vict. c. 10, s. 20, and consolidated in 1888, 51 V. c. 82, s. 35, and is re-enacted in its present form first in 1891, c. 25, s. 4.

5. ² A free miner's certificate shall be in the following form:—

² Derived from and almost identical with 1871, Rev. Laws, No. 9, s. 19. Continued in 1884, 47 V. c. 10, s. 16; 1891, c. 25, s. 5; 1888, Rev. Stat., 51 Vict. c. 82, s. 32; but appears for first time in its present shape in 1896.

Section 5 of chapter 82, Consol. Acts, 1888, repealed by section 21 of chapter 28, 1897; section 135, "Mineral Act."

BRITISH COLUMBIA.

Free Miner's certificate.

NOT TRANSFERABLE.

Date,	Valid for	year only.	No.
This is to certify that	of	has paid me	
this day the sum of	, and is entitled to all the rights and		
privileges of a free miner for	year from the	day	
of	, 18 .		

(Signature of Gold Commissioner or Mining Recorder,
as the case may be.)

1896, c. 34, s. 5.

6. ³ If any person or joint stock company shall apply for a free miner's certificate at the Mining Recorder's office during his absence, and shall leave the fee required by this Act with the officer or other person in charge of the said office, he or it shall be entitled to have such certificate from the date of such application; and any free miner shall at any time be entitled to obtain a free miner's certificate, commencing to run at the expiration of his then existing free miner's certificate, provided that when he applies for such certificate he shall

produce to the Mining Recorder, or in case of his absence shall leave with the officer or other person in charge of the Mining Recorder's office, such existing certificate. 1896, c. 34, s. 6.

³ Derived from, but in abbreviated form, 1888, Consol. Acts, c. 82, s. 41, s.-s. 2.

Section 6 of chapter 82, 1897, derived from 1891, c. 25, s. 6.

7. ⁴ If any free miner's certificate be accidentally destroyed or lost, the owner thereof may, on payment of the fees set out in the Schedule to this Act, have a true copy of it, signed by the Mining Recorder, or other person by whom or out of whose office the original was issued. Every such copy shall be marked "substituted certificate," and unless some material irregularity be shown in respect thereof, every original or substituted free miner's certificate shall be evidence of all matters therein contained. 1896, c. 34, s. 7.

⁴ Derived from and nearly identical with 1871, Rev. Laws, No. 90, s. 21; 1891, c. 25, s. 7.

8. ⁵ Every person and joint stock company engaged in mining for minerals (other than coal) shall take out a free miner's certificate, and every person or joint stock company who mines or works as a miner in any mineral claim, mine held as real estate, or tunnel, or on any flume, drain, or ditch, without having taken out and obtained such certificate, shall, on conviction thereof in a summary way, forfeit and pay a penalty not exceeding twenty-five dollars, besides costs: Provided, always, that nothing herein contained shall prejudice the right to collect wages or payment for work done by any person who, through not being a free miner, has rendered himself liable to the above penalty. 1896, c. 34, s. 8.

⁵ Derived from, but in abbreviated form, 1884, 47 Vict. c. 10, s. 25; 1888, Consol. Acts, c. 82, s. 40; 1891, c. 25, s. 8.

9. ⁶ Subject to the proviso hereinafter stated, no person or joint stock company shall be recognized as having any right or interest in or to any mineral claim, or any minerals therein, or in or to any water right, mining ditch, drain, tunnel, or flume, unless he or it shall have a free miner's certificate unexpired. And on the expiration of a free miner's certificate the owner thereof shall absolutely forfeit all his rights and interests in or to any mineral claim, and all any minerals therein, and in or to any and every water right, mining ditch, drain, tunnel, or flume, which may be held or claimed by such owner of such expired free miner's certificate, unless such owner shall, on or before the day following the expiration of such certificate, obtain a new free miner's certificate: Provided, nevertheless, should

any co-owner fail to keep up his free miner's certificate, such failure shall not cause a forfeiture or act as an abandonment of the claim, but the interest of the co-owner who shall fail to keep up his free miner's certificate shall, *ipso facto*, be and become vested in his co-owners *pro rata*, according to their former interests: Provided, nevertheless, that a shareholder in a joint stock company need not be a free miner, and, though not a free miner, shall be entitled to buy, sell, hold, or dispose of any shares therein: And provided, also, that this section shall not apply to mineral claims for which a Crown grant has been issued: Provided, always, that if any person or company shall acquire, by purchase or otherwise, any mine or mineral claim, or interest therein, and it shall appear that some person or company through whom he or it claims title has neglected to take out or keep up a free miner's certificate, according to the provisions of this Act, such person or company so acquiring such mine or mineral claim, or interest therein, may, within one month from the time when he or it shall first acquire knowledge thereof, or if knowledge already acquired within one month after this Act becomes law pay to the Recorder of the Mining Division in which the claim affected is situate the fee or fees which ought to have been paid by such person or company in default as aforesaid, and thereupon the title of such person or company so acquiring the said mine or mineral claim, or interest therein, shall be deemed to be and always to have been as good and effectual as if no such default had occurred, but this last proviso shall not affect litigation pending at the passage of this Act. 1896, c. 34, s. 9.

*The portion of this section relating to uncertificated persons not entitled to interest in mining property is derived from 1884, 47 V. c. 19, s. 24; 1888, Consol. Acts, c. 82, s. 39; and that portion relating to providing a shareholder need not have such license is derived from 1834, 47 V. c. 10, s. 114; 1888, Consol. Acts, c. 82, s. 130; 1891, c. 25, s. 9; repealed and re-enacted in 1895, c. 39, s. 2.

10. Every owner of a mine or mineral claim, and every contractor for the performance of any work upon a mine or mineral claim, shall pay the annual fee for a free miner's license for any person in their employment and liable for the fee, and may deduct the amount so paid on account of such person from the amount of salary or wages due or to become due to him from such employer upon production and delivery of the receipt for such tax to such person. Every such owner or contractor shall furnish to the Mining Recorder or Collector, when requested by him so to do, from time to time, a list of all persons in his employ, or indirectly employed by him, liable to pay the said license fee; but no such statement shall

bind the Recorder or Collector or excuse him from making due enquiry to ascertain its correctness. 1896, c. 34, s. 10.

⁷ Derived from 1895, c. 39, s. 9.

11. ⁸ If any person fails to pay the said license fee for his employees, or to deliver to the Recorder or Collector the list mentioned in the preceding section when required to do so, or knowingly states anything falsely in such list, such person shall be liable to a penalty not exceeding one hundred dollars, to be recovered, together with the amount of the unpaid license fees, upon summary conviction before one Justice of the Peace. 1896, c. 34, s. 11.

⁸ Derived from 1895, c. 39, s. 10.

12. ⁹ Every free miner shall, during the continuance of his certificate, but not longer, have the right to enter, locate, prospect, and mine upon any waste lands of the Crown for all minerals other than coal, and upon all lands the right whereon to so enter upon, prospect and mine all minerals other than coal shall have been, or hereafter shall be, reserved to the Crown and its licensees, and also to enter, locate, prospect, and mine for gold and silver upon any lands the right whereon to so enter and mine such gold and silver shall have been, or shall be, reserved to the Crown and its licensees. Excepting out of all the above description of lands any land occupied by any building, and any land falling within the curtilage of any dwelling house, and any orchard, and any land for the time being actually under cultivation, and any land lawfully occupied for mining purposes other than placer mining, and also Indian reservations and military or naval reservations: Provided that where any hydraulic mining works, established in accordance with the "Placer Mining Act," have been in operation, the land which may have been uncovered by the operation of such works shall not be located or mined upon by any free miner other than the person or persons carrying on such hydraulic works for a space of six months next after the same shall have been so uncovered: Provided that in the event of such entry being made upon lands already lawfully occupied for other than mining purposes, and not being a portion of lands granted to and held by or for a railway company under any railway subsidy Act heretofore or to be hereafter passed, such free miner shall give adequate security to the satisfaction of the Gold Commissioner or Mining Recorder for any loss or damages which may be caused by such entry if requested by the owner or owners of such land, and should he refuse to give such security when so requested his right to such claim or mine shall cease and determine: Provided that after

such entry he shall make full compensation⁹¹ to the occupant or owner of such lands for any loss or damages which may be caused by reason of such entry; such compensation, in case of dispute, to be determined by the Court having jurisdiction in mining disputes, with or without a jury. 1897, c. 28, s. 3.

⁹⁰ As to "where free miner may mine, prospect," etc., derived from 1871, Rev. Laws, No. 90, s. 22, and 1884, 47 V. c. 10, s. 22; and that part relating to occupied lands, and providing compensation therefor, is derived from 1871, Rev. Laws, No. 90, s. 23: 1884, 47 Vict. c. 10, s. 23, "Hydraulic works," original. The above section is re-enacted and amended in 1891, c. 25, s. 10; amended in 1892, c. 32, s. 3; also in s. 3 of 60 V. c. 28; 1897, re-enacted *verbatim*.

In *Atkins v. Coy*, (1897) 5 B. C. R. 6, Drake, J., at p. 18, referring to section 10 of The Mineral Act, 1891, of which the section is largely a reproduction, said: "This being the authority for a miner to enter, locate and prospect, no one else, after a proper location has been made, can enter on the same ground until the period has elapsed for recording. The first lawful location has a temporary title, liable to be displaced by a failure to record, or by non-compliance with other provisions of the Act, such as non-possession of a miner's license, or for not placing the posts as required by the Act," etc.

The requirement of a bond by section 10 of the Mineral Act, 1891, is a directory provision for the protection of the land owner and not a prerequisite to the acquisition by the miner of the mineral rights from the Crown. The exception of "lands held as mineral claims" means *de facto* claims, and the word "lawfully" can not be imported; a claimant to the land, as land, has no status to question the due performance by the free miner of the conditions required by the Crown as a prerequisite to his right to a valid mineral claim thereon; the discovery of a mineral vein or lode is not essential to a valid mineral claim, "rock in place" is sufficient; the words "rock in place" are satisfied by rock *in situ*, bearing valuable deposits of mineral, although not lying between defined walls, or in a vein or ledge; a certificate of improvements under this section is a bar to adverse claimants in any right and on all grounds except fraud; holders of mineral claims are not entitled to deal with any portion of the surface, except in accordance with the mining laws, and are not entitled to sell or dispose of the same: *N. & F. S. Ry. Co. v. Jerry*, (1897) 5 B. C. R. 396.

⁹¹ Referring to what are called the way-leave cases (*Jegon v. Vivian*, (1871) L. R. 6 Ch. 742, and *Phillips v. Homfray*, (1871) L. R. 6 Ch. 770), *Lindley, L.J.*, in *Whitwham v. Westminster Brymbo Coal Co.*, (1896) 2 Ch. 538, said at p. 541: "Those cases are based upon the principle that, if one person has, without leave of another, been using that other's land for his own purposes, he ought to pay for such user."

13. ¹⁰ Any free miner shall be at liberty, at any period of the year, while actually prospecting or engaged in mining, to kill game for his own use. 1896, c. 34, s. 13.

¹⁰ Derived from 1891, c. 25, s. 12.

14. ¹ A free miner shall have all the rights and privileges granted to free miners by the "Placer Mining Act." *Ib.* s. 14.

¹ Derived from 1891, c. 25, s. 13.

MINERAL CLAIMS AND MINES.

Locating, Recording, Working and Crown Grants.

15. ² Any free miner desiring to locate a mineral claim, shall, subject to the provisions of this Act with respect to land which may be used for mining, enter upon the same and locate a plot of ground measuring, where possible but not exceeding, fifteen hundred feet in length by fifteen hundred feet in breadth, in as nearly as possible a rectangular form, that is to say: All angles shall be right angles, except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the lines need not necessarily be meridional. In defining the size of a mineral claim, it shall be measured horizontally, irrespective of inequalities of the surface of the ground. *Ib.* s. 15.

(a) Any free miner desiring to locate a fractional mineral claim shall, subject to the provisions of this Act with respect to land that may be used for mining, enter upon the same and locate any plot of ground lying between and bounded on opposite sides by previously located mineral claims, and known by the locator to measure less than fifteen hundred feet in length by fifteen hundred feet in breadth, as a fractional mineral claim; such fractional mineral claim need not be in rectangular form, and none of the angles need necessarily be right angles nor the lines be meridional, and the lines of the previously located mineral claims (whether surveyed or not) between which the fractional mineral claim is located may be adopted as the boundary of the fractional mineral claim. Added by "The Mineral Act Amendment Act, 1898," s. 3.

In defining the size of a fractional mineral claim it shall be measured horizontally, irrespective of inequalities of the surface of the ground. (*Ib.*)

² Derived from 1884, c. 10, ss. 59, 62; except that claim is 1,500 ft. x 600 ft.; amended 1886, c. 14, s. 6; consolidated in 1888, c. 82, ss. 74, 75 (see as to variations); 1891, c. 25, s. 14; amended in 1892, c. 32, s. 5; amended in 1893, c. 29, s. 3, which is identical.

See *Richards v. Price*, (1897) 5 B. C. R. 362, where it was held by Harrison, Co.J., under sections 15 & 16 (d) of the Mineral Act, 1896, that a locator of mineral in place is within the sub-section, though he may not

have been the first discoverer, and that the bona fide attempt to comply with the provisions of the Act does not merely mean an attempt to locate a claim of size and form as provided in section 15, but means an attempt to comply with the formalities provided by section 16, as to staking, and that a locator who had staked his location by four corner posts, without any legal first and second posts, etc., had not made such an attempt.

(Section 16 was repealed by the "Mineral Act Amendment Act, 1898," sec. 4, and the following substituted):

16. ³ A mineral claim shall be marked by two legal posts, placed as near as possible on the line of the ledge or vein, and the posts shall be numbered 1 and 2, and the distance between posts 1 and 2 shall not exceed fifteen hundred feet, the line between posts Nos. 1 and 2 to be known as the location line, and upon posts Nos. 1 and 2 shall be written the name given to the mineral claim, the name of the locator, and the date of the location. Upon No. 1 post there shall be written, in addition to the foregoing, "Initial Post," the approximate compass bearing of No. 2 post, and a statement of the number of feet lying to right and to the left of the line from No. 1 to No. 2 post, thus:—"Initial post. Direction of post No. 2, feet of this claim lie on the right, and feet on the left of the line from No. 1 to No. 2 post."

³ Section 16 (1896), 59 Vict. c. 34; s. 4 (1897), 60 Vict. c. 28, amended, is identical.

This section is derived in part from 1891, c. 25, s. 15; amended by 1892, c. 32, s. 5; amended by 1893, c. 29, s. 3, and in part original. Reference is made to manner of marking off claims prior to this Act. 1871, Rev. Laws, No. 90, s. 56; 1884, 47 Vict. c. 10, s. 63. Consolidated in 1888, c. 82, s. 73, and in 1897 by R. S. B. C. as sec. 16.

See *Richards v. Price*, (1897) 5 B. C. R. 362, *supra*; and note to s.-s. (d) *infra*.

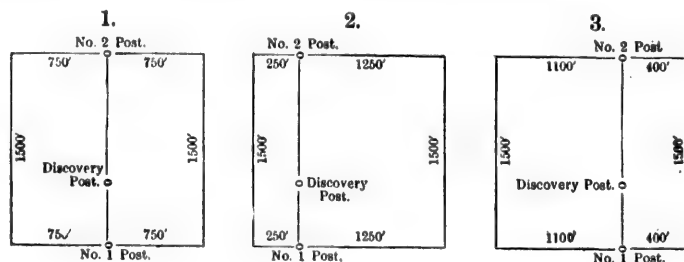
All the particulars required to be put on No. 1 and No. 2 posts shall be furnished by the locator to the Mining Recorder, in writing, at the time the claim is recorded, and shall form a part of the record of such claim.

When a claim has been located, the holder shall immediately mark the line between posts Nos. 1 and 2 so that it can be distinctly seen; in a timbered locality, by blazing trees and cutting underbrush, and in a locality where there is neither timber nor underbrush he shall set legal posts or erect monuments of earth or rock not less than two feet high and two feet in diameter at base, so that such line can be distinctly seen.

The locator shall also place a legal post at the point where he has found rock in place, on which shall be written discovery post: Provided that when the claim is surveyed the surveyor shall be

guided by the records of the claim, the sketch plan on the back of the declaration made by the owner when the claim was recorded, posts 1 and 2, and the notice on No. 1, the initial post.

EXAMPLES OF VARIOUS MODES OF LAYING OUT CLAIMS LOCATED AS FULL SIZED MINERAL CLAIMS



It shall not be lawful to move No. 1 post, but No. 2 post may be moved by the Provincial Land Surveyor when the distance between Nos. 1 and 2 posts exceeds 1,500 feet in order to place No. 2 post 1,500 feet from No. 1 post on the line of location. When the distance between posts Nos. 1 and 2 is less than 1,500 feet, the Provincial Land Surveyor has no authority to extend the claim beyond No. 2.

But in case either No. 1 or No. 2 post be on the boundary line of a previously located claim, which boundary line is not at right angles to said location line, the Provincial Land Surveyor shall include the fraction so created within the claim being surveyed: Provided always, that the whole claim does not exceed an area of 51.65 acres.

The "location line" of a mineral claim, located as a full sized mineral claim shall govern the direction of one side of the claim, upon which the survey shall be extended according to this Act.

- (a) The holder of a mineral claim shall be entitled to all minerals which may lie within his claim, but he shall not be entitled to mine outside the boundary lines of his claim continued vertically downwards:
- (b) This Act shall not prejudice the rights of claim-owners nor claim-holders whose claims have been located under former Acts.

Previous to the Mineral Act (1891) Amendment Act, 1892, 55 Vict. c. 32, the apex rule, substantially culled from U. S. legislation, was in

force in British Columbia, but in 1892 sub-section (a) above was introduced confirming the rights of the holder of a mineral claim to the minerals within the boundary lines of his claim continued vertically downwards, as in all other parts of Canada. But by sub-section 6 the rights of claim-owners who located their claims under former Acts were preserved.

The reason for the change was the same as that for a similar change in the German mining laws, namely, the interminable litigation inherent in the system of extra lateral rights.

The vast learning of the law of the apex developed in the American literature on the subject is, therefore, only applicable to mineral claims located under Acts prior to that of 1892, which became law on the 23rd April, 1892. Reference may be made to the discussions on the subject by Dr. Rossiter W. Raymond, the author of the Law of the Apex, and in the most recent American works, Lindley on Mines (1897), and the law of Mines and Mining in the United States (1897) by Barringer and Adams. It is sufficient to point out that among the innumerable American cases on the subject numerous discussions may be found in support of any possible view.

Sections 31 & 32 of chapter 25 of 54 Vict. (1891) provided:

"Section 31. The lawful holder of a mineral claim shall have the exclusive right and possession of all the surface included within the lines of his location, and of all the veins or lodes throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins or lodes may so far depart from a perpendicular in their course downwards as to extend outside the vertical side lines of such surface location; but his right of possession to such outside parts of such veins or lodes shall be confined to such portions thereof as lie between the vertical planes drawn downwards as above described through the end lines of his location, so continued in their own direction that such planes will intersect such exterior parts of such veins or lodes, and nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim, to enter upon the surface of a claim owned or possessed by another; provided always that a prior location on the dip of a vein or lode shall have priority over a subsequent location on the same vein or lode, although such subsequent location may be upon the apex of the vein or lode.

And provided always that in cases where the land in which such claim is situated is lawfully owned or occupied other than for mining purposes, the above clause shall be read subject to the rights or interests of such owner or occupier.

And it is hereby expressly declared that a location laid crosswise of a vein or lode, so that its centre line crosses the same instead of following the course thereof, will secure only so much of the vein or lode as it actually crosses at the surface, and the side lines of the location will become the end lines thereof for the purpose of defining the rights of the owners. A location shall be deemed to have been laid crosswise when the smallest angle made by the centre line falling on the general course of the vein or lode is greater than forty-five degrees."

"Section 32. Where two or more veins or lodes intersect or cross

each other on their downward dip priority of title shall govern, and the prior location shall be entitled to all ore or mineral contained within the space of intersection; provided, however, that the subsequent location shall have the right of way through the said space of intersection for the purpose of the convenient working of the said subsequent location; and provided, also, that where two or more veins or lodes unite on their downward dip, the oldest or prior location shall take the vein or lode below the point of union, including all the space of intersection."

- (c) No mineral claim of the full size shall be recorded without the application being accompanied by an affidavit or solemn declaration in the Form S, made by the applicant or some person on his behalf cognizant of the facts: That the legal notices and posts have been put up; that mineral has been found in place on the claim proposed to be recorded; that the ground applied for is unoccupied by any other person as a mineral claim, and is not occupied by any building, or any land falling within the curtilage of any dwelling-house, or any orchard, or any land under cultivation, or any Indian Reservation. In the said declaration shall be set out the name of the applicant, the number and date of his free miner's certificate, and the name of the place where the said certificate was issued, and the date of the location of the claim. The words written on the No. 1 and No. 2 posts shall be set out in full, and as accurate a description as possible of the position of the claim given, having special reference to any prior locations it may join:

No mineral claim which at the date of its record is known by the locator to be less than a full sized mineral claim, shall be recorded without the word 'fraction' being added to the name of the claim, and the application being accompanied by an affidavit or solemn declaration in the Form T, made by the applicant or some person on his behalf cognizant of the facts: That the legal posts and notices have been put up; that mineral has been found in place on the fractional claim proposed to be recorded; that the ground applied for is unoccupied by any other person as a mineral claim, and is not occupied by any building, or any land falling within the curtilage of any dwelling-house, or any orchard, or any land under cultivation, or any Indian Reservation. In the said declaration shall be set out the name of the applicant, the number and date of his free miner's certificate, and the name of the place where the said certificate was issued, and the date of the location of the claim. The words written on the No. 1 and No. 2

posts shall be set out in full, and as accurate a description as possible of the position of the claim given. A description of the land bounding the fractional claim on all sides shall state whether it is vacant Crown land or land occupied by mineral claims, with the names of the claims. A sketch plan shall be drawn by the applicant on the back of declaration, showing as near as may be the position of the adjoining mineral claims, and the shape and size, expressed in feet, of the fraction desired to be recorded:

- (d) A fractional mineral claim shall be marked by two legal posts placed as near as possible on the line of the previously located mineral claims, and shall be numbered 1 and 2, and the distance between the posts 1 and 2 shall not exceed fifteen hundred feet, the line between post 1 and 2 to be known as the location line, and upon posts Nos. 1 and 2 shall be written the name given to the mineral claim, the name of the locator and the date of the location. Upon No. 1 post there shall be written in addition to the foregoing, initial post, the approximate compass-bearing of No. 2 post, and as full a description as possible of the land bounding the fractional claim:
- (e) The Provincial Land Surveyor, when surveying a fractional mineral claim, whether located before or after the passage of this Act, may survey such claim so that it shall contain, as nearly as possible, all the unoccupied ground lying between the previously located mineral claims, as described in the affidavit and by the sketch plan made by the locator when the claim was recorded, provided that no side of a fractional mineral claim shall exceed fifteen hundred feet in length :
- (f) Provided that when a fractional mineral claim has been located between previously located and unsurveyed mineral claims, if when any such previously located mineral claims are surveyed, any of the posts of the fractional mineral claim are found to be on the previously located mineral claims, the location of such fractional mineral claim shall not be invalid by reason of the location posts of the fractional mineral claim being on such previously located mineral claims, and the owner of such fractional mineral claim may, by obtaining the permission of the Gold Commissioner of the district, move the posts of the fractional mineral claim and place them on the surveyed line of the adjoining previously located mineral claims:

The sub-section (a) of section 15 and sub-sections (d), (e), and (f) of section 16 of this Act, shall apply to all fractional mineral claims located, and to the surveys of fractional mineral claims made after the passing of this Act, and shall also apply to the completed surveys of fractional mineral claims the field notes of which have not yet been accepted by the Department of Lands and Works, notwithstanding anything hereinbefore enacted.

- (g) Provided that the failure on the part of the locator of a mineral claim to comply with any of the foregoing provisions of this section shall not be deemed to invalidate such location, if upon the facts it shall appear that such locator has actually discovered mineral in place on said location, and that there has been on his part a *bona fide* attempt to comply with the provisions of this Act, and that the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity.³²

³² This proviso modifies the general rule, that when a statute confers a right the regulations, forms, and conditions which it prescribes for its acquisition are imperative in the sense that non-observance of any of them is fatal.

The non-observance to be fatal must, however, be substantial, for the law does not regard trifles *de minimis non curat lex*.

The Court looks through the form at the substance and real nature of an Act: *Jeffries v. Alexander*, (1860) 8 H. L. C. 594, per Byles, J., p. 629.

In deciding what is of the essence of the action, and what is immaterial, the spirit and scope of the Act must be regarded, for he who considers the letter merely of a statute cannot comprehend its meaning; *qui haeret litera haeret in cortice*: *Cullana v. George* (19th App., 1898) 34 C. L. J. 363, was an action for the possession of three claims located by the plaintiffs in August, 1896. Instead of placing a legal post, which is defined to be a "stake," the plaintiffs built monuments of stone, and fastened the necessary notices on them. Timber might have been procured about a mile distant from the claim, and wooden stakes could have been secured and placed on the claim in one day.

McColl, J., held that there was not such a compliance with the statute as would entitle the plaintiffs to the protection of s.-s. (d).

Unreported decisions, one by Drake, J., in the Green Mountain Case, and one by Walkem, J., in *Clark v. Haney*, were referred to.

See also note to sec. 15, *supra*.

- (h) Provided that, in regard to fractional mineral claims, the Lieutenant-Governor in Council may make such orders as are deemed necessary from time to time to carry out the provisions of this Act according to their true intent, and to meet the cases which may arise and for which no provision is made, or, when the provision is made, is ambiguous or doubtful.

17. ⁴ Any location made upon Sunday or any public holiday shall not for that reason be invalid, any law or statute to the contrary notwithstanding. 1896, c. 34, s. 17.

⁴ Derived from 1891, c. 25, s. 16.

18. ⁵ In cases where, from the nature or shape of the ground, it is impossible to mark the location line of the claim, as provided by this Act, then the claim may be marked by placing legal posts as nearly as possible to the location line, and noting the distance and direction such posts may be from such location line, which distance and direction shall be set out in the record of the claim. *Ib.* s. 18.

⁵ Derived from 1891, c. 25, s. 17; amended in 1892, c. 32, s. 6, and amended in 1893, c. 29, s. 4, identical.

19. ⁶ Every free miner locating a mineral claim shall record the same with the Mining Recorder of the district within which the same is situate, within fifteen days after the location thereof, if located within ten miles of the office of the said Mining Recorder. One additional day shall be allowed for such record for every additional ten miles, or fraction thereof. Such record shall be made in a book to be kept for the purpose in the office of the said Mining Recorder, in which shall be inserted the name of the claim, the name of each locator, the number of each locator's free miner's certificate, the locality of the mine, the direction of the location line, the length in feet, the date of location, and the date of the record. Such record shall be, as near as may be possible, in the Form B in the Schedule to this Act, and a certified copy thereof shall be given by the Mining Recorder to the free miner or his agent. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned. *Ib.* s. 19.

⁶ Derived from 1871, Rev. Laws, No. 90, s. 25; record to be made within 3 days, and no provision for abandonment on failure to record within prescribed period; also in 1884, 47 Vict. c. 10, s. 27; consolidated in 1888, c. 82, s. 41; 1891, c. 25, s. 19; amended in 1892, c. 32, s. 7; amended in 1893, c. 29, s. 5, identical.

Chapter 82, 1888, Consol. Acts, repealed by section 21, chapter 28, 1897; "Mineral Act," section 135.

20. ⁷ A free miner shall not be entitled to a record of a mineral claim until he shall have furnished the said Mining Recorder with all the above particulars. *Ib.* s. 20.

⁷ Derived from 1884, c. 10, s. 30; consolidated in 1888, c. 82, s. 44; 1891, c. 25, s. 20, identical.

Section 20 of chapter 82, 1888, Consol. Acts, repealed by s. 21, c. 28, 1897; "Mineral Act," section 135.

21. ⁸ Upon the establishment of a mining division and the opening of a Mining Recorder's office therein, under the authority of this Act, such office and none other shall be the proper office for recording all mineral claims within such mining division, and making all records in respect thereof. *Ib.* s. 21.

⁸ Derived from 1891, c. 25, s. 21.

In *Kilbourne v. McGuigan*, (1897) 5 B. C. R. 233, the defendants made an application for a certificate of improvements for the mining ground in question, and published the notice prescribed by section of the Act of 1894, whereupon the proposed plaintiffs, in accordance with the terms of the notice, filed their adverse claim with the Gold Commissioner. By oversight, action was not commenced within the prescribed time, and, on a motion to extend the time to commence action, Drake, J., held that by the Mineral Act Amendment Act, 1892, s. 14 (b.), the filing of an adverse claim in the office of the Mining Recorder was a condition precedent to the right of action, and that there was no jurisdiction to extend the time. On appeal, the Full Court (McCreight, Walkem and McColl, JJ.), held, affirming Drake, J.: (1) That the adverse claim was not properly filed; (2) that, owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters. The notice of appeal served on the agent of the solicitor for the proposed defendants was held sufficient.

22. ⁹ If through ignorance any free miner shall record a mineral claim in a different mining division to that in which such claim is situate, such error shall not affect his title to such claim, but he shall within fifteen days from the discovery of his error, record such claim in the mining division in which it is situate, and such new record shall bear the date of the first record, and a note shall be made thereon of the error and of the date of the ratification of the same. *Ib.* s. 22.

⁹ Derived from 1891, c. 25, s. 22.

Section 22 of chapter 82, Consol. Acts, 1888, repealed by s. 21, c. 28, 1897; "Mineral Act," section 135.

23. ¹⁰ If a free miner applies at the Mining Recorder's office during his absence to record a mineral claim, or any document or other matter required by this Act to be recorded, and leaves the fee required by this Act, and the particulars and information required to enable the Mining Recorder to make such record, with the officer or other person in charge of said office, he shall be entitled to have such record dated on the date of such application. *Ib.* s. 23.

¹⁰ Derived from 1888, Consol. Acts, c. 82, s. 41, s.-s. 2, and is practically identical; 1891, c. 25, s. 23, identical.

24. ¹ Any free miner having duly located and recorded a mineral claim shall be entitled to hold the same for the period of one year from the recording of the same, and thence from year to year without the necessity of re-recording: Provided, however, that during each year, and each succeeding year, such free miner shall do, or cause to be done, work on the claim itself to the value of one hundred dollars, and shall satisfy the Gold Commissioner or Mining Recorder that such work has been done, by an affidavit of the free miner or his agent, setting out a detailed statement of such work, and shall obtain from such Gold Commissioner or Mining Recorder, and shall record, a certificate of such work having been done: Provided, also, that all work done outside of a mineral claim with intent to work the same shall, if such work have direct relation and be in direct proximity to the claim, be deemed, if to the satisfaction of the Gold Commissioner or Mining Recorder, for the purposes of this section, to be work done on the claim: Provided, further, that any free miner, or company of free miners holding adjoining mineral claims, or any two or more free miners who locate and record adjoining mineral claims, not exceeding eight in number, to be worked by them in partnership under the provisions of any Act for the time being in force, shall, subject to filing a notice of their intention with the Gold Commissioner or Mining Recorder, be allowed to perform on any one or more of such claims all the work required to entitle him or them to a certificate for work for each claim so held by him or them. If such work shall not be done, or if such certificate shall not be so obtained and recorded in each and every year, the claim shall be deemed vacant and abandoned, any rule of law or equity to the contrary notwithstanding.² 1897, c. 28, s. 5.

¹ Section 24, 59 Vict. c. 34; s. 5, 60 Vict. c. 28, 1897. Derived from 1886, c. 14, s. 8; 1887, c. 22, ss. 2 & 3; 1888, Consol. Acts, c. 82, s. 85; 1891, c. 25, s. 24, identical.

² This section proceeds on the sound principle that a free miner's rights should depend as little as possible upon the discretion of officials. In mining matters the maxim applies, *optima est lex quae minimum relinquit arbitrio judicis*.

Provided that if said free miner shall have done the work within the year, and if he shall, within thirty days after the time for obtaining and recording said certificate, record the same and pay an additional fee of ten dollars (\$10), such record shall have the same effect as if recorded within the year. (Added by "The Mineral Act Amendment Act, 1898," s. 5.)

Provided, further, should any free miner perform assessment work on his claim during any one year to the value of one hundred

dollars (\$100) or more, in excess of the amount of work required to be done in any one year by this Act, he shall have the right of recording a certificate of the work done to the value of each one hundred dollars (\$100), so as to cover his assessment work for each of such additional year or years, by paying the proper recording fee for recording each of such certificates of work, and he shall be exempt from performing assessment work for each year covered by such record, and the certificate of work shall be issued and recorded accordingly. (*Ib.*)

Woodbury v. Hudnut, and three other cases, (1884) 1 B. C. R. 39 (Part 2) (Court of Appeal). The first, third and fourth of these cases were suits brought in the Gold Commissioner's Court for the right of possession in certain claims, alleged to have been constructively abandoned by non-working. The second case was a suit by the owner of a claim for damages for trespass; the alleged trespasser relying on a supposed constructive abandonment. The Gold Commissioner found for the defendants in each case.

On the 6th October, 1882, W. located a claim; and on the same day, on the ground of sickness, obtained from the Gold Commissioner leave of absence extending over the impending close season (1st November to 1st June). On the 25th May following, M., as the agent of H., located and recorded a large portion of the same ground. Held, that this was an unauthorized trespass by M., and conferred no title on H.

This Court cannot, on an appeal of this description, inquire whether the Gold Commissioner had sufficient grounds for granting leave of absence.

The Gold Act (section 49) provides that "A claim shall be deemed abandoned and open to the occupation of any free miner when the same shall have remained unworked by the registered holder thereof for the space of 72 hours, unless sickness or other reasonable cause be shown." And by section 46, a claim must be "faithfully and not colourably worked."

Held, the construction by a miner of a cabin fit and convenient for a residence while working on his claim, though not standing on the claim itself, may be taken as proper and miner-like working on the claim, within the meaning of the statute, so as to preclude constructive abandonment.

Scmble, the wrongful occupation of a claim by trespasser excuses the true owner from the obligation to represent his claim by actual work thereon, provided he is not guilty of laches in seeking to establish his right.

Scmble, if a free miner quit his claim for more than 72 hours, and return and resume possession, the claim not having been in the meantime taken up by any other person, he is in of his old estate.

In *Woodbury v. Hudnut, 1 B. C. R. (Part 2) 39, Begbie, C.J., said, at p. 41: "It was said that the work to be done on a claim (which is to be worked continuously) must be miner-like work—that building a house is not miner-like work at all; and, moreover, that the house in question was not on the Kootenay Chief ground at all, though not far off. Now, of course, in Cornwall or Northumberland, building a house is not*

miner's work—it is not mining at all. In old and highly organized countries the landlord mines with hired labour, and puts up houses for his men. Yet the cost of those houses is just as much part of his mining capital invested in the mines, and the houses are just as useful for working the mines as the pumps and furnaces with which the water is removed or the ore roasted. And among the hills of British Columbia, the first thing a miner does (when he intends continuous working) is to secure, or to build if necessary, a cabin in a spot convenient as possible to his claim. It is not necessary that it should be actually on his ground. There may be overwhelming advantages in wood and water a quarter of a mile off. It is quite sufficient if it be in a place manifestly convenient for the workers. The building of a cabin on first settling down to the serious working of a mineral claim is therefore just as much miner's work in reference to the holding and working the claim as is, afterwards, the sinking of a shaft or the driving a tunnel, or the building a pump. And without saying that fifty men working on a claim for one day are in all cases to be deemed equivalent to fifty days' continuous work by the claim-holder or his representative; yet, in house building, five men in one day can often do far more work than one man in five days."

Page 42. "On the 1st June, the plaintiff going on the ground, finds the defendant already in possession. In our opinion, that exonerates him from the necessity of working until the title is determined. In the first place, if the plaintiff insists on working, that might obviously lead to a breach of the peace; in the next place, no man can be expected to expend labour and capital on ground which may be taken from him."

Page 43. "Where one man pretends to represent two claim-holders, it is strong evidence that his representation in both cases is colourable, and so, worthless. A miner might as well attempt to go to sleep in two bunks."

Page 43. "Now it is as well to point out that the 72 hours' absence mentioned in the gold laws, though it may be and generally is sufficient evidence of intention to abandon the claim in any case, yet it is by no means conclusive evidence in all cases. The miner may return, and find his claim intact, and recommence working. In such a case he would be probably held to be in 'as of his old estate,' without being required to re-locate and re-record. His absence may have been sanctioned by the previous permission of the Gold Commissioner; or it may be for sickness, fire, or flood, or such other necessary or reasonable cause as that the Gold Commissioner may subsequently approve of it."

25. ³ The holder of a mineral claim may, in lieu of the work required to be done by section 24 of this Act, on a claim in each year, pay to the Mining Recorder in whose office the claim is recorded the sum of one hundred dollars and receive from such Recorder and record a receipt for such payment. Such payment and the record thereof in any year shall relieve the person making it from the necessity of doing any work during the year in and for which and upon the claim in respect of which such payment is recorded. 1896, c. 34, s. 25.

³ Derived from 1895, c. 39, s. 4.

26. ⁴ Notwithstanding anything to the contrary contained in any Act, every Crown Grant hereafter issued of a mineral claim shall convey, and be deemed to convey, only the right to the use and possession of the surface of such claim, including the use of all the timber thereon, for the purpose of winning and getting from and out of such claim the minerals contained therein, including all operations connected therewith or with the business of mining, and the lawful holder by record of a claim shall, during the continuance of his record, be entitled to the same surface rights and no others, and all remaining surface rights shall be deemed to be vested in the Crown, and may be granted and disposed of as is provided by the Land Laws for the time being in force, but subject always to the rights of free miners as aforesaid. 1897, c. 28, s. 6.

⁴ Section 26, 59 Vict. c. 34, 1896; s. 6, 60 Vict. c. 28, 1897, identical. Derived from 1895, c. 39, s. 3, s.-s. (23). But see 1871, Rev. Laws, No. 90, s. 35; 1884, 47 Vict. c. 10, s. 40; 1888, Consol. Acts, c. 82, s. 55.

27. ⁵ In case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself, and subject, further, to the free miner having complied with all the terms and conditions of this Act. 1896, c. 34, s. 27.

⁵ Derived from 1884, 47 Vict. c. 10, s. 31; 1888, Consol. Acts, c. 82, s. 50; 1891, c. 25, s. 18, identical.

Section 27 of 1888, Consol. Acts, c. 82, repealed by s. 21 of c. 28, 60 Vict. 1897; "Mineral Act," section 135.

See *Atkins v. Coy*, (1897) 5 B. C. R. 6, where the Full Court, overruling *Spinks, Co.J.*, held that a valid location is a prerequisite to a valid record of a mineral claim.

McCreight, J., said at p. 12: "It is true that section 9 of the Mineral Act (1891) Amendment Act, 1892, does enact 'that in case of any dispute as to the title to a mineral claim, priority of record will determine the right,' but the concluding part of the section contains the following material qualification: 'Subject to any question as to the validity of the record, and subject also to a compliance by the free miner with the provisions of this Act.' The 'provisions of this Act,' in this respect, I think, are mainly to be found in section 10 of the Mineral Act, 1891, and I think give no encouragement to locate on land lawfully occupied for mining purposes, but, on the contrary, practically prohibits it. In short, I do not think section 9 of the Mineral Act (1891) Amendment Act, 1892, was intended to encourage one miner to trespass on the location of another; in other words, to do what may be known, perhaps questionably in forensic language, as 'jumping.' I gather the meaning of the Legislature to be that there shall be a good location, not obtained of course by trespass (see section 10 of the Mineral Act, 1891), and a good record, made of course, within the time required by law.

28. ⁶ Upon any dispute as to the title to any mineral claim no irregularity ⁶¹ happening previous to the date of the record of the last certificate of work shall affect the title thereto, and it shall be assumed that up to that date the title to such claim was perfect, except upon suit by the Attorney-General based upon fraud. *Ib.* s. 28.

⁶ Derived from 1891, c. 25, s. 25.

Section 28, Consol. Acts, c. 82, repealed by s. 21, c. 28, 60 Vict. 1897; "Mineral Act," section 135.

⁶¹ This introduces the rule, *quod fieri non debet factum valet*; otherwise the maxim *debile fundamentum fallit opus* would apply.

29. ⁷ No free miner shall be entitled to hold in his own name, or in the name of any other person, more than one mineral claim on the same vein or lode, except by purchase, but such free miner may hold by location a claim upon any separate vein or lode. *Ib.* s. 29.

⁷ Derived from 1891, c. 25, s. 29. But see 1871, Rev. Laws, No. 90, s. 33; 1884, 47 Vict. c. 10, s. 38; 1888, Consol. Acts, c. 82, s. 53.

Section 29, Consol. Acts, c. 82, repealed by s. 21, c. 28, 60 Vict. 1897.

30. ⁸ A free miner may at any time abandon any mineral claim by giving notice in writing of such intention to abandon to the Mining Recorder, and from the date of the record of such notice all interest of such free miner in such claim shall cease. 1897, c. 28, s. 7.

⁸ Section 30, 59 Vict. c. 34, 1896; s. 7, 60 Vict. c. 28, 1897. Derived from 1891, c. 25, s. 27. But see as to partnership abandonment 1871, Rev. Laws, No. 90, s. 85; also 1888, Consol. Acts, c. 82, s. 119.

See *N. & F. S. R. Co. v. Jerry*, (1897) 5 B. C. R. 396, where it was decided that the title to a duly located and recorded mineral claim is equivalent under this section to a lease for a year, vested in its owner, and the doctrine of implied surrender by conduct does not apply to it; and the only abandonment by which the owner can be concluded is that by notice of abandonment given by him to the Crown, as provided for by section 27 of the Act (of 1891, which, as amended by 1897, No. 63, s. 7, is now section 30).

31. ⁹ When a free miner abandons a mineral claim he shall have the right to take from the same any machinery and any personal property which he may have placed on the claim, and any ore which he may have extracted therefrom, within such time as shall be fixed by the Gold Commissioner or Mining Recorder. 1896, c. 34, s. 31.

⁹ Derived from 1891, c. 25, s. 28.

32. ¹⁰ No free miner shall be entitled to relocate any mineral claim, or any portion thereof which he shall have failed to record

within the prescribed period, or which he shall have abandoned or forfeited, unless he shall have obtained the written permission of the Gold Commissioner to make such re-location; and he shall hold no interest in any portion of such mineral claim, by location, without such permission. *Ib.* s. 32.

¹⁰ Derived from 1891, c. 25, s. 29.

In *Granger v. Fotheringham*, (1894) 3 B. C. R. 590. (Crease, J.) The owners of a mineral claim, the title to which was considered defective, permitted a third person to re-locate it in his own name, whereupon he, without previous binding agreement to that effect, conveyed his title to them for a consideration.

Held, not a re-location by the owners within section 29, c. 25, Mineral Act, 1891, and that the written permission of the Gold Commissioner was not necessary.

The owner of shares in an incorporated mining company is not an owner of any part of a mining claim owned by it within section 29, *supra*.

The location of a mineral claim is not void because as staked it exceeds the 1,500 feet in length provided by section 3 of the Mineral Act (1891) Amendment Act, 1893, but may be corrected by virtue of section 14 of that Act by the Provincial Surveyor who makes the survey, by the removal for the correction of distance of any post except the initial post No. 1, if the alteration does not affect the previously acquired rights of adjacent owners.

Section 27 of the Act, providing that the owner may abandon a mineral claim, inferentially permits him to abandon any portion of it upon his specifying and recording such abandonment.

The Court should deal with mining disputes upon the principles of a Court of Equity, and should discountenance a plaintiff whose action is based upon defects in title, knowledge of which was acquired by him while a Government employee in a mining record office; it being contrary to his duty to the public and those interested in the records for him so to use such information.

The design of the Act is to prohibit mining by any person without a free miner's certificate, and what can not be done directly can not be done indirectly; *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*.

33. ¹ Where a tunnel is run for the development of a vein or lode the owner of such tunnel shall, in addition to any mineral claim legally held by him, have the right to all veins or lodes discovered in such tunnel: Provided that the ground containing such veins or lodes be marked out by him as a mineral claim, and be duly recorded within fifteen days after such discovery; and provided further, that such veins or lodes are not included in any existing mineral claim. Any money or labour expended in constructing a tunnel to develop

a vein or lode shall be deemed to have been expended on such vein or lode. *Ib.* s. 33.

¹ Derived from and nearly identical with 1884, 47 Vict. c. 10, s. 66; except that it is provided 3 days after discovery, 1891, c. 25, s. 33, identical.

34. ² The interest of a free miner in his mineral claim shall, save as to claims held as real estate, be deemed to be a chattel interest, equivalent to a lease, for one year, and thence from year to year, subject to the performance and observance of all the terms and conditions of this Act. *Ib.* s. 34.

² Derived from 1871, Rev. Laws, No. 90, s. 34; 1884, 47 Vict. c. 10, s. 39, and 1888, Consol. Acts, c. 82, s. 54; see variations, 1891, c. 25, s. 34, identical.

See *Wells v. Petty*, (1897) 5 B. C. R. 360. See *Stussi v. Brown*, (1897) 5 B. C. R. 380, where it was held that to maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mining claim, both that statute and section 34 of the Mineral Act must be pleaded.

See *N. & F. S. R. Co. v. Jerry*, (1897) 5 B. C. R. 396, in note to section 30.

35. ³ Any lawful holder of a mineral claim shall be entitled to a Crown grant thereof on payment to the Government of British Columbia of the sum of five hundred dollars in lieu of expenditure on the claim, or if the intending purchaser shall have performed assessment work in accordance with section 24 of the said Act, and paid any sums of money in accordance with section 25 of the said Act, such assessment work and payments of money may be considered as part payment of the above sum of five hundred dollars, and on payment in money of the balance of said sum of five hundred dollars the said intending purchaser shall be entitled to said Crown grant. The intending purchaser shall comply with all the provisions of section 36 of the said Act, except such as have respect solely to the work required to be done on claims. ("Mineral Act Amendment Act, 1898," s. 6.)

³ Derived from 1884, 47 Vict. c. 10, s. 74, claim-holder to pay \$50 an acre; amended in 1886, 49 Vict. c. 14, s. 10, claim-holder to pay only \$25 an acre; 1888, Consol. Acts, c. 82, s. 88, claim-holder to pay only \$25 an acre; 1891, c. 5, s. 35; amended, 1892, c. 32, s. 12, R. S. B. C. (1897) s. 35.

36. ⁴ Whenever the lawful holder of a mineral claim shall have complied with the following requirements, to the satisfaction of the Gold Commissioner, he shall be entitled to receive from the Gold Commissioner a certificate of improvements in respect of such claim,

unless proceedings by the person claiming an adverse right under section 37 of this Act have been taken:—

⁴Derived from 1891, c. 25, s. 36; is identical down to word "claim" on 4th line.

- (a) Done or caused to be done work on the claim itself in developing a mine, and paid money, together amounting to the value of five hundred dollars, exclusive of all houses, buildings and other like improvements. For the purpose of this section, work done on the claim by a predecessor or predecessors in title shall be deemed to have been done by the applicant who receives a transfer of such claim: ("The Mineral Act Amendment Act, 1898," s. 7.)
- (b) Found a vein or lode within the limits of such claim:
- (c) Had the claim surveyed by an authorized Provincial Land Surveyor, who shall have made three plats of the claim, and who shall have accurately defined and marked the boundaries of such claim upon the ground, and indicated the corners by placing monuments or legal posts at the angles thereof, and upon such monuments or posts shall be inscribed by him the name and the official designation of the claim, and the corner represented thereby, and who shall have, on completion of survey, forwarded at once the original field-notes and plan direct to the Lands and Works Department. After a certificate of improvements has issued in respect of any claim so surveyed, *prima facie* evidence of its location upon the ground may be given by any person who has seen and can describe the position of such posts purporting to be so marked as aforesaid, and the said field-notes, or a copy thereof certified in accordance with the "Evidence Act," shall be received in all Courts as *prima facie* evidence of the facts which they purport to set forth:
- (d) Shall have posted on some conspicuous part of the land embraced in the survey a copy of the plat of the claim, and a legible notice in writing, in Form F of the Schedule to this Act, of his intention to apply for a certificate of improvements, and shall also have posted a similar notice in the Mining Recorder's office, and such notice shall contain—
 - (1) The name of the claim;
 - (2) The name of the lawful holder thereof;

- (3) The number of such holder's existing free miner's certificate;
 - (4) His intention to apply for certificate of improvements at the end of sixty days, for the purpose of obtaining a Crown grant;
 - (5) The date of the notice:
- (e) Inserted a copy of such notice in the British Columbia Gazette and in a newspaper published and circulating in the division in which the claim is situated, or, in the absence of such local paper, in the one nearest thereto, for at least 60 days prior to such application, which insertion can be made at any time after the posting of the notice on the claim: (1897, c. 28, s. 8.)
- (f) Shall have filed with the Mining Recorder a copy of the surveyor's original field notes and plat immediately after posting the notice on the claim of his intention to apply for a certificate of improvements:
- (g) Filed with the Mining Recorder—
- (1) The copies of the British Columbia Gazette and newspaper containing the notices of application for certificate of improvements:
 - (2) Affidavit of the holder of the claim, or his agent, in the Form G in the Schedule of this Act. ("The Mineral Act Amendment Act, 1898," s. 8.)
- (h) At the expiration of the term of the said publication, provided no action shall have been commenced and notice thereof filed with the Mining Recorder, he shall forward to the owner or agent, under Form I of the Schedule to this Act, the documents referred to above, together with a certificate that the notice provided by section 36, sub-section (d), has been posted in his office, and the field notes and plan deposited for reference therein from the date of the first appearance of the said notice in the British Columbia Gazette, and continuously therefrom for a period of at least sixty days. The Recorder shall also set out in Form I the name of the recorded owner of the claim at the date of sign the same. 1896, c. 34, s. 36, and 1897, c. 28, s. 8.

37. (1) A certificate of improvements when issued as aforesaid shall not be impeached in any Court on any ground except that of fraud.

(2) ⁷ In case any person shall claim an adverse right of any kind, either to possession of the mineral claim referred to in the application for certificate of improvements or any part thereof, or to the minerals contained therein, he shall, within sixty days after the publication in the British Columbia Gazette of the notice referred to in section 36 hereof (unless such time shall be extended by special order of the Court upon cause being shown), commence an action in the Supreme Court of British Columbia to determine the question of the right of possession or otherwise enforce his said claim, and shall file an affidavit, to be made by the person asserting the adverse claim, and setting forth the nature, boundaries and extent of such adverse claim, together with a map or plan thereof, made and signed by a Provincial Land Surveyor, and a copy of the writ in said action with the Mining Recorder of the district or mining division in which the said claim is situate within twenty days from the commencement of said action, and shall prosecute the said suit with reasonable diligence to final judgment, and a failure to so commence or so to prosecute shall be deemed to be a waiver of the plaintiff's claim. After final judgment shall have been rendered in the said action the person, or any one of the persons, entitled to the possession of the claim or any part thereof, may file a certified copy of the same in the office of the Mining Recorder. After the filing of the said judgment, and upon compliance with all the requirements of the next preceding section, such person or persons shall be entitled to the issue to him or to them of a certificate of improvements in respect of the claim or the portion thereof which he or they shall appear from the decision of the Court rightly to possess: Provided that this section shall not apply to any adverse claim filed or action to enforce the same commenced prior to the date of this Act coming into force, but the same shall be continued in the same manner as if this Act had not been passed. ("The Mineral Act Amendment Act, 1898," s. 9.)

⁷ Derived from 1892, c. 32, s. 14; amended in 1893, c. 29, s. 10. Original; but see 1884, 47 Vict. c. 10, s. 70. As to adverse claims in respect of Crown grants, and mode of proceeding, also, 1888, Consol. Acts, c. 82, s. 83; R. S. B. C. (1897) c. 135, s. 37.

Re The Maple Leaf and Lanark Mineral Claims. (In the matter of the "Mineral Act, 1891," and Amendments), (1893) 2 B. C. R. 323.

(Divisional Court). The order of a Judge extending the thirty days provided by the Mineral Act (1891) Amendment Act, 1892, within which to commence proceedings in a Court of competent jurisdiction to enforce an adverse claim, is appealable to the Divisional Court under section 67, Supreme Court Act, although not made in any pending cause. It appeared that a writ endorsed to prosecute the adverse claim in the Supreme Court had been issued before the application for the order appealed from was made, but that fact was not disclosed to the Judge upon the application.

Held, allowing the appeal, that the fact of the issue of the Supreme Court writ was material to the original application and should have been disclosed.

Such a circumstance can be taken advantage of upon an appeal from as well as upon a motion to rescind the order. After judgment allowing the appeal and adjournment of the Court, but before the order was drawn up, the matter was spoken to before the Court upon a subsequent day in presence of counsel for both parties by special leave, and it appearing that a notice (of which respondent's counsel was not instructed) abandoning the appeal had been served by appellant's solicitor upon respondent's solicitor on the morning of but before the argument of appeal:

Held, that the appeal was at an end upon the giving of the notice abandoning it, and the order allowing the appeal not having been drawn up no order would be issued, but the appeal should stand as if struck out of the paper.

In re "Good Friday," Timber, Indiana, Old Kentuck, and Good Hope Mineral Claims. In the matter of the Mineral Claims Act (1891) and Amending Acts, 1896, 4 B. C. R. 496. (Davie, C.J.) The Mineral Act (1891) Amendment Act, 1892, s. 14 and s-s. 2, provides an adverse claimant shall within thirty days after filing a claim (unless such time shall be extended by special order of the Court upon cause being shown), commence proceedings in Court of competent jurisdiction to determine the right, etc.

Held, that the Court has jurisdiction to extend the time limited as well after as before the lapse of the thirty days.

38. ⁹ After the issuing and recording of such certificate of improvements, and while such certificate shall be in force, it shall not be necessary to do any work on such claim. *Ib.* s. 38.

^{*} Derived from 1891, c. 25, s. 38; amended 1892, c. 32, s. 15.

39. ¹⁰ On the granting and recording of such certificate of improvements in respect to a mineral claim situate outside of the railway belt, the holder thereof shall be entitled to a Crown grant of such claim without the payment of the five hundred dollars required

by section 35. And on the granting and recording of a certificate of improvements in respect of a mineral claim inside the Railway Belt,¹¹ the holder thereof shall be entitled to a Crown grant of such claim on the payment of five dollars to the Mining Recorder. *Ib.* s. 39.

¹⁰ Derived from 1891, c. 25, s. 39; amended in 1892, c. 32, s. 16, identical.

¹¹ Title to land in the Railway Belt, *Queen v. Dumers*, 3 Ex. Ch. Rep. 293, affd. (1893) 22 S. C. R. 482; *Queen v. Farwell*, (1893) 22 S. C. R. 553; *The Queen v. Farwell*, (1887) 14 S. C. R. 392.

40. ¹ The holder of a mineral claim for which a certificate of improvements has been granted and recorded shall make application for a Crown grant to the Gold Commissioner, enclosing his certificate of improvements, the Crown grant fee of five dollars, the Mining Recorder's certificate, Form I, the field notes and plat, and the affidavit, Form G, within three months from the date of such certificate of improvements, and in default of such application having been made within such time such certificate of improvements shall lapse and become absolutely void. *Ib.* s. 40.

¹ Derived from 1891, c. 25, s. 40.

41. ² If the holder of a mineral claim, after applying for a certificate of improvements, shall sell and transfer such claim to another free miner, upon satisfactory proof of such sale and transfer being made to the Gold Commissioner, the new holder of the claim shall be entitled to a certificate of improvements in his own name. And if a sale and transfer shall be made to any person or company after a certificate of improvements shall have been issued, upon proper proof of such sale and transfer being made to the satisfaction of the Chief Commissioner of Lands and Works, the Crown grant shall issue to the new holder of the claim. *Ib.* s. 41.

² Derived from 1891, c. 25, s. 41, identical.

42. ³ When a holder of a mineral claim has taken out his certificate of improvements he shall not record any transfer of his rights in the said claim until he obtains his Crown grant. *Ib.* s. 42.

³ Derived from 1894, c. 32, s. 7.

43. ⁴ The issuance of a Crown grant shall not invalidate any lien which may have attached to any mineral claim previous to the issuance of such Crown grant. *Ib.* s. 43.

⁴ Derived from 1891, c. 25, s. 42.

44. ⁵ A Crown grant of a mineral claim located on any waste lands of the Crown shall be deemed to transfer and pass the right to all minerals within the meaning of this Act (excepting coal) found in veins, lodes, or rock in place, and whether such minerals are found separately or in combination with each other, in, upon, or under the land in the said Crown grant mentioned. *Ib.* s. 44.

⁵ Section 44, 59 Vict. c. 34, 1896. Derived from 1884, 47 Vict. c. 10, ss. 64 & 69; consolidated in 1888; Consol. Acts, c. 82, ss. 77 & 82; identical with 1891, c. 25, s. 43; amended in 1895, c. 39, s. 6.

45. ⁶ Crown grants of mineral claims located on lawfully occupied lands the right whereon to enter, prospect, and mine all minerals (other than coal) has been reserved to the Crown and its licensees, shall pass to the grantee all minerals within the meaning of this Act (other than coal) found in veins or lodes, or rock in place, and whether such minerals are found separately or in combination with each other, which may be in, upon, or under the land in the said Crown grant mentioned, and including all the rights given to mineral claim holders of mineral claims so located, but such Crown grant shall expressly reserve the rights of such prior occupant.

⁶ Derived from 1891, c. 25, s. 44, and 1894, c. 32, s. 44.

(Where the mineral claim is located on land lawfully occupied under a timber lease, the Crown grant shall convey the surface and minerals within the meaning of this Act (save coal) found in veins or lodes, or rock in place, but shall reserve the timber). *Ib.* s. 45.

46. ⁷ Crown grants of mineral claims located on lawfully occupied lands, the right whereon to enter and mine gold and silver has been reserved to the Crown and its licensees, shall pass to the grantee all the gold and silver found in veins, or lodes, or rock in place, which may be in, upon, or under the land in the said Crown grant mentioned, and including all the rights given to mineral claim holders of mineral claims so located; but such Crown grant shall expressly reserve the rights of such prior occupant. *Ib.* s. 46.

⁷ Derived from 1891, c. 25, s. 45.

47. ¹ If an adverse claim shall only affect a portion of the ground for which a certificate of improvements is applied, the applicant shall nevertheless be entitled to a certificate of improvements for the undisputed remainder of his claim, upon complying with the requirements of this Act. ("The Mineral Act Amendment Act, 1898," s. 15.)

¹ Derived from 1891, c. 25, s. 48. See also 1884, 47 Vict. c. 10, s. 70, part; 1888, Consol. Acts, c. 82, s. 83.

48. ² When judgment in such case is rendered by the Court, a memorandum of such judgment shall be entered in the "Record Book"; and if by any judgment the original boundaries of any claim shall be changed, a plat made by a Provincial Land Surveyor, and signed by the Judge by whom the judgment has been given, shall be filed in the office of the Mining Recorder. *Ib.* s. 48.

² Derived from 1891, c. 25, s. 49.

49. ³ Every conveyance, bill of sale, mortgage, or other document of title relating to any mineral claim, not held as real estate, or mining interest, shall be recorded within the time prescribed for recording mineral claims: Provided, always, that the failure to so record any such document shall not invalidate the same as between the parties thereto, but such documents as to third parties shall take effect from the date of record, and not from the date of such document. And provided further, that after the issuance of a Crown grant for any mineral claim it shall not be necessary to register any transfer or other document of title executed subsequent to such Crown grant with the Mining Recorder of the district in which the said claim is situated; but all documents relating to the same may thereafter be registered in the same manner as are other documents of title relating to the transfer of real estate, and all the provisions of the "Land Registry Act," and any amendments thereto, shall apply to such registration. *Ib.* s. 49.

³ Derived from s. 50, c. 25, 1891, except proviso. See also 1884, 47 V. c. 10, s. 33.

Identical with 1891, c. 25, s. 50.

See *Atkins v. Coy*, (1897) 5 B. C. R. 14, which decides that this and the next section "seem to introduce, as might be expected, into the law relating to transfers under above Act (the Mineral Act, 1891, and the Mineral Act (1891) Amendment Act (1892), the policy of the Land Registry laws, namely, that a prior unregistered conveyance must be postponed to that which is subsequent but duly registered."

"The same policy has, I believe, characterized our legislation with respect to gold fields mining claims for the last thirty years or upwards." Per McCreight, J., at p. 14.

50. ⁴ No transfer of any mineral claim, or of any interest therein, shall be enforceable unless the same shall be in writing, signed by the transferrer or by his agent authorized in writing, and recorded by the Mining Recorder; and if signed by an agent, the authority of such

agent shall be recorded before the record of such transfer. All mineral claims derived under Crown grant, and every transfer thereof, or any interest therein, shall be registered under the provisions of the "Land Registry Act." *Ib.* s. 50.

⁴ Derived from 1884, 47 Vict. c. 10, s. 33; 1891, c. 25, s. 51; 1871, Rev. Laws, No. 90, s. 29.

See *Atkins v. Coy*, (1897) 5 B. C. R. 14, note to section 49.

Identical with 1891, c. 25, s. 51.

See *Wells v. Petty*, (1897) 5 B. C. R. 360.

See *Stussi v. Brown*, (1897) 5 B. C. R. 380, where it was doubted by *McCreight, J.*, who delivered the judgment of the Supreme Court, whether the bar provided by section 51 of the Mineral Act, 1891, that "no transfer of any mineral claim, etc., shall be enforceable unless the same shall be in writing, etc.," is not confined to a plaintiff seeking to enforce the transfer and inapplicable to a defendant.

51. ⁶ The transfer of any real estate acquired under the provisions of the "Gold Mining Amendment Act, 1873," shall be in writing, signed by the transferrer or his agent authorized in writing, and need not be by deed or under seal. *Ib.* s. 51.

⁶ Derived from 1892, c. 32, s. 17, identical.

52. ⁷ No mineral claim shall be open to location by any other person during the last illness, nor, unless with the permission in writing of the Gold Commissioner, for twelve months after the death of the lawful holder. *Ib.* s. 52.

⁷ Derived from 1891, c. 25, s. 53; amended, 1892, c. 32, s. 18, identical. But see 1884, c. 10, ss. 115 & 117.

53. ⁸ No free miner shall suffer from any acts of omission, or commission, or delays on the part of any Government official, if such can be proven. *Ib.* s. 53.

⁸ Derived from 1891, c. 25, s. 54; identical; this is a declaration of the general principle that an act in law shall prejudice no man, *actus legis nemini est damnosus*.

Mill-sites.

54. ⁹ A free miner may locate any unoccupied and unreserved Crown land not known to contain mineral, and not exceeding five acres, as a mill-site. No free miner shall be entitled to obtain and hold under this section more than one mill-site for each mineral

claim lawfully held by him. Such mill-site shall be as nearly as possible in the form of a square. On locating a mill-site, the free miner shall comply with the following requirements:—

⁹ Derived from 1891, c. 25, s. 55, identical.

(a) Mark out the land by placing a legal post at each corner;

(b) Post a notice on each post, stating—

1. The name of such free miner;
2. The number of his free miner's certificate;
3. His intention, at the expiration of sixty days from the date of the notice, to apply for the land as a mill-site;
4. The date of the notice;

(c) Post a copy of such notice on the office of the Mining Recorder. *Ib.* s. 53.

55. ¹⁰ On the expiration of sixty days after the fulfilment of the above requirements, the free miner shall deposit, in duplicate, in the office of the Mining Recorder, a plat of the said land made by an authorized Provincial Land Surveyor, and prove by affidavit that he has complied with the above requirements, and that the said land is not known to contain minerals, and shall furnish such other proof of the non-mineral character of the land as the Gold Commissioner may require; the free miner shall then be entitled to a lease, for one year, of the said land, which lease shall be executed by the Gold Commissioner. If, during the continuance of such lease, such free miner shall prove to the satisfaction of the Gold Commissioner that he has put or constructed works, or machinery for mining or milling purposes on the said mill-site, of the value of at least five hundred dollars, he shall be entitled to a Crown grant of such mill-site upon payment of five dollars per acre for such land. Any free miner now having a lease of a piece of land for a mill-site, upon proving to the satisfaction of the Gold Commissioner that he has put or constructed works, or machinery for mining or milling purposes, on the said mill-site of the value of at least five hundred dollars, shall, on payment of five dollars per acre, be entitled to a Crown grant of such mill-site. *Ib.* s. 55.

¹⁰ Derived from and identical with 1891, c. 25, s. 56.

56. ¹ On applying for a Crown grant of a mill-site, the free miner shall—

¹ Derived from and identical with 1891, c. 25, s. 57, containing in addition sub-section (f), "affidavit that the applicant holds no other mill-site obtained by him under this Act," which was repealed by 1892, c. 32, s. 21.

(1) Pay the sum of five dollars per acre to the Mining Recorder.

(2) Deposit with the Mining Recorder the following documents:

(a) Lease of the mill-site:

(b) Plat of the mill-site:

(c) Surveyor's original field-notes:

(d) A certificate from the Gold Commissioner that works or machinery for mining or milling purposes have been put or constructed on the mill-site to the value of at least five hundred dollars:

(e) Application for the Crown grant. *Ib.* s. 56.

57. ² Crown grants of mill-sites shall pass to the grantee all the surface of the land in the said Crown grant mentioned, but all such Crown grants shall expressly reserve all minerals under the said land, and the right to the Crown and its licensees to enter and mine the said minerals, and may be in the following form:—

² Derived from and identical with 1891, c. 25, s. 58.



Royal arms.

Province of British Columbia

No.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, and so forth.

To all to whom these presents shall come—GREETING:

KNOW YE that We do by these presents, for Us, Our heirs and successors, in consideration of the sum of _____ to Us paid, give and grant unto _____ h heirs and assigns, All that parcel or lot of land situate _____ and numbered _____ on the official plan or survey of the said _____ in the Province of British Columbia. To have and to hold the said parcel or lot of land, and all and singular the premises hereby granted, with their appurtenances, unto the said _____ h heirs and assigns forever.

Provided, nevertheless, that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing paths, or other works of public utility or convenience, so nevertheless that the lands so to be resumed shall not exceed one-twentieth part of the whole of the lands aforesaid, and that no such resumption shall be made of any lands on which any buildings may have been erected, or which may be in use for the more convenient occupation of any such buildings.

Provided also, that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting under Our or their authority, to enter into and upon any part of the said lands, and to raise and get thereout any minerals, within the meaning of this Act, which may be thereupon or thereunder situate, and to use and enjoy any and every part of the same land, and of the easements and privileges thereto belonging, for the purpose of such raising and getting, and every other purpose connected therewith, paying in respect of such raising, getting and use, reasonable compensation.

Provided also, that it shall be lawful for any person duly authorized in that behalf by Us, Our heirs and successors, to take and occupy such water privileges, and to have and enjoy such rights of carrying water over, through or under any parts of the hereditaments hereby granted, as may be reasonably required for mining or agricultural purposes in the vicinity of the said hereditaments, paying therefor a reasonable compensation to the aforesaid _____ h heirs and assigns.

Provided also, that it shall be at all times lawful for any person duly authorized in that behalf by Us, Our heirs and successors, to take from or upon any part of the hereditaments hereby granted,

In Testimony whereof we have caused these, Our letters, to be made patent, and the Great Seal of Our Province of British Columbia to be hereunto affixed: WITNESS, His Honour _____, Lieutenant-Governor of Our Province of British Columbia, at Our Government House, in Our City of Victoria, this _____ day of _____, in the year of Our Lord one thousand eight hundred and _____, and in the _____ year of Our Reign.

Tunnels and Drains.

Carson & Eholt v. Clark & Martley, (1885) 1 B. C. R. (Part 2) 159;
Begbie, C.J.

Also, that the Commissioner should, before granting any authority to divert water under the Land Acts, see that all the requirements of the statute have been complied with, but that the applicant is responsible for the insufficiency of his record.

Seem, that even prior to passing section 50, no exclusive right could be acquired until such ditch was constructed.

The duties of a Commissioner in considering applications for water under Land Acts pointed out.

In the case of Jenny Lind Co. (appellants) v. Bradley-Nicholson Co. (respondents), (1883) 1 B. C. R. 185 (Part 2), Walkem, J. Each company had a hill-claim, fronting on the right bank of William Creek, and dependent on its water for the means of mining it. The B. N. Co., whose claim was higher up-stream than the J. L. Co.'s, turned nearly all the water of the creek from its bed, at a point on the stream some distance above their claim, and conveyed it by a ditch to their ground, thereby depriving the J. L. Co. of water, and obliging them to stop work.

The B. N. Co. claimed the right to do so, by virtue of section 36 of the Gold Mining Ordinance, which entitles a miner to use "so much of the water naturally flowing through or past his claim as may be necessary to work it."

Held, reversing the Gold Commissioner's decision, that the water so used by the B. N. Co. was not "water flowing through or past" their claim, as its natural flow had been intercepted and turned into a ditch above the claim, and that the B. N. Co. had, therefore, no right to such water under section 36.

The J. L. Co. having complied with Part X. of the same Ordinance—referring to "Ditches"—obtained from the Gold Commissioner, in April, 1882, a license to divert 150 inches of water from the creek at their ditch-head, which was higher up stream than both their and the B. N. Co.'s claims, and use it by means of their ditch, on the ground, for mining purposes, for five years. The B. N. Co. held no similar license, either directly or derivatively.

Held, that owners of hill-claims could only acquire water privileges such as those claimed in the present action, by complying with Part X.; and that under the circumstances stated the J. L. Co. had an exclusive right to use 150 inches of water, according to the terms of their license and by virtue of it; and that the B. N. Co., having no similar license, had no right to any of the water of Williams Creek.

Held, also that the grant of a water-privilege, under Part X., need not be by deed.

"Discretion" said Lord Mansfield in *Rex v. Wilkes*, (1770) 4 Burr. 2539, "when applied to a Court of justice means sound discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague or fanciful; but legal and regular," or according to Lord Coke, *discretio est discernere per legem quid sit justum*.

PART III.

Mining Partnerships.

59. ³ All mining partnerships shall be governed by the provisions hereof, unless they shall have other and written articles of partnership. *Ib.* s. 80.

³ Derived from 1871, Rev. Laws, No. 90, s. 78; 1884, c. 10, s. 95; 1891, c. 25, s. 81.

60. ⁴ A mining partnership shall, unless otherwise agreed upon, be deemed to be a yearly partnership, renewable from year to year by tacit consent. *Ib.* s. 81.

⁴ Derived from 1871, Rev. Laws, No. 90, s. 79; 1884, c. 10, s. 96, with which it is identical.

61. ⁵ The business of the partnership shall be mining and such other matters as pertain solely thereto. *Ib.* s. 82.

⁵ Almost identical with 1871, Rev. Laws, No. 90, s. 80; 1884, c. 10, s. 97; 1891, c. 25, s. 82.

62. ⁶ Mining partnerships can locate and record in the partnership name a mineral claim for each partner, but the name of every partner and the number of every partner's free miner's certificate shall be on the record of every such claim. The partnership name must appear on every such record, and all the claims so taken up shall be the property of the partnership: Provided always, that no free miner who is the member of a mining partnership, holding by right of location a mineral claim, shall be entitled to hold by right of location in his own name or in the name of any other partnership any interest in any other mineral claim on the same vein or lode on which the partnership claim is situate. *Ib.* s. 83.

⁶ Derived from 1891, c. 25, s. 84, with which it is identical.

63. ⁷ Should any partner fail to keep up his free miner's certificate, such failure shall not cause a forfeiture, or act as an abandonment of the partnership claim, but the share of the partner who shall so fail to keep up his free miner's certificate shall, *ipso facto*, be and become vested in his partners, *pro rata*, according to their former interests, on the said partners paying the free miner's certificate for the year. *Ib.* s. 84.

⁷ Derived from and identical with 1891, 54 Vict. c. 25, s. 85, omitting the words following at the end of the section, "on the said partners paying the free miner's certificate for one year," which were added in 1895, c. 39, s. 7.

64. ⁸ A partner in any mining partnership or his agent authorized in writing shall, at any meeting thereof, be entitled to vote upon any interest or fraction of an interest which he may hold therein; but the result of the votes given shall be determined by the number of the full interests voted upon, and not by the number of partners voting at such meeting. *Ib.* s. 85.

⁸ Section 85, 1896, almost identical with 1884, c. 10, s. 99; 1888, Consol. Acts, c. 82, s. 115; 1891, c. 25, s. 86, with which it is identical.

65. ⁹ A majority of such votes may decide when, how long, and in what manner to work the partnership claim, the number of men to be employed, and the extent and manner of levying the assessments to defray the expenses incurred by the partnership: Such majority may also choose a foreman or manager, who shall represent the partnership, and sue and be sued in the name of the partnership for assessments and otherwise; and he shall have power to bind them by his contracts: Every partner, or his duly authorized agent, shall be entitled to represent his interest in the partnership property by work and labour so long as such work and labour be satisfactory to the foreman or manager. In the event of such workman being discharged by the foreman or manager, the Court having jurisdiction in mining disputes may, if requested, summon the foreman or manager before it, and upon hearing the facts make such order as it shall deem just. *Ib.* s. 86.

⁹ Substantially identical with 1871, Rev. Laws, No. 90, s. 81; 1884, c. 10, s. 98; 1891, c. 25, s. 87, identical.

66. ¹⁰ All assessments shall be payable within thirty days after being made. *Ib.* s. 87.

¹⁰ Section 87, 1896, derived from 1871, Rev. Laws, No. 90, s. 82, which provides for payment within 5 days thereafter; 1884, c. 10, s. 101; 1888, Consol. Acts, c. 82, s. 117; 1891, c. 25, s. 88, is identical (30 days).

67. ¹ Any partner making default in payment after receiving a notice specifying the amount due by him, shall, if such amount be correct, be personally liable therefor to the partnership, and his interest in the partnership property may be sold by the partnership for the payment of the debt, and any further assessment which may have accrued thereon up to the day of sale, together with all costs and charges occasioned by such default; and if the proceeds of the sale be insufficient to pay off the several sums mentioned, the Court having jurisdiction in mining disputes, upon being applied to, shall issue an order directed to the Sheriff to seize and sell any other personal property of the debtor. Notices of sale shall, in either of the above cases, be conspicuously posted thirty clear days prior to the day of sale in the vicinity of such mining or other property, and on the Court House or Mining Recorder's office nearest thereto. But if such partner be absent from the district such notices shall be posted as aforesaid sixty clear days before the day of sale, and a copy of such notice shall be published in some newspaper circulating in the district wherein such mining or other property is situate. Such sale shall be by public auction to the highest bidder. The purchaser shall be entitled to possession of the property sold, and to a bill of

sale therefor signed by the auctioneer; such bill of sale shall confer such title upon the purchaser as the owner had. And for the purpose of carrying out the provisions of this section the Mining Recorder of the mining division in which the property to be sold is situate, or some one appointed by him, may act as auctioneer. *Ib.* s. 88.

¹ Derived from 1871, Rev. Laws, No. 90, ss. 83 & 84; 1884, c. 10, s. 102; 1888, Consol. Acts, c. 82, s. 118; 1891, c. 25, s. 89, with which it is identical, omitting all the words after "and for the purpose, etc.," on last line of p. 23, down to the end of section, which is original; the principle is *qui sentit commodum sentire debet et onus*.

68. ² After a notice of abandonment in writing shall have been served on the foreman or manager of a partnership by any member thereof, and duly recorded, such member shall not be liable for any debts or other liabilities of the partnership incurred after service and record of such notice, and no member shall be deemed to have abandoned an interest until service and record of such notice. *Ib.* s. 89.

² Derived from 1871, Rev. Laws, No. 90, s. 85; 1884, c. 10, s. 103; 1888, Consol. Acts, c. 82, s. 119, and identical with 1891, c. 25, s. 90.

69. ³ Upon the abandonment of any share in a mining partnership, the title to the abandoned share shall vest in the continuing partners, *pro rata*, according to their former interests. *Ib.* s. 90.

³ Derived from and identical with 1891, c. 25, s. 91.

70. ⁴ Any partner shall be entitled to sell, or contract for the sale of, his interest in the partnership property, but such interest shall continue liable ⁴¹ for all the debts of the partnership. *Ib.* s. 91.

⁴ Identical with and derived from 1891, c. 25, s. 92.

⁴¹ On the principle that *qui sentit commodum sentire debet et onus*.

71. ⁵ No partner shall, after a bill of sale conveying his interest has been recorded, be liable for any indebtedness of the partnership incurred thereafter. *Ib.* s. 92.

⁵ Identical with and derived from 1891, c. 25, s. 93.

Limited Liability.

72. ⁶ Any mining partnership composed of two or more free miners may limit the liability of its members, upon complying with the requirements following, that is to say:—

⁶ Derived from 1871, Rev. Laws, No. 90, s. 86, which provided for the posting up in a conspicuous place the name of the company, with the word "registered" instead of "limited liability"; 1884, c. 10, s. 105, ditto; 1891, c. 25, s. 94, with which it is identical.

Upon filing with the Mining Recorder a declaratory statement containing the name of the partnership, the location and size of every partnership claim, and the particular interest of each partner; and also placing upon a conspicuous part of every such claim, in large letters, the name of the partnership, followed by the words "Limited Liability." *Ib.* s. 93.

73. ⁷ The words "Limited Liability" shall thereupon become part of the partnership name. *Ib.* s. 94.

⁷ Identical with 1891, c. 25, s. 95.

74. ⁸ After such conditions shall have been complied with, no member of such partnership shall be liable for any indebtedness incurred thereafter beyond an amount proportioned to his interest in the partnership. *Ib.* s. 95.

⁸ Identical with 1891, c. 25, s. 96.

75. ⁹ Every such partnership shall keep a correct account of its assets and liabilities, together with the names of the partners, and the interest held by each, and shall make out a monthly balance sheet showing the names of the creditors, and the amounts due to each, and file the same among the papers of the partnership; and such balance sheet and all the books of the partnership shall be open to the inspection of creditors at all reasonable hours. *Ib.* s. 96.

⁹ Derived from 1871, Rev. Laws, No. 90, s. 88, substituting for the words "partners" and "partnership" the words "shareholders" and "company," otherwise identical. See also in same form, 1884, c. 10, s. 107; 1888, Consol. Acts, c. 82, s. 123; 1891, c. 25, s. 97, with which it is identical.

76. ¹⁰ Every partner in such partnership shall be at liberty to sell or dispose of his interest therein, or of any part thereof, to any other free miner.¹¹ *Ib.* s. 97.

¹⁰ 1884, c. 10, s. 114, provides for every shareholder, though not a free miner, being at liberty to buy, sell, etc.; 1888, Consol. Acts, c. 82, s. 130; 1891, c. 25, s. 98, is identical.

¹¹ The purchaser would be clothed with the rights of the partner so selling his interest; *assignatus utitur jure auctoris*.

77. ¹ No member of such partnership, after a bill of sale conveying his interest has been duly recorded, or after he has served a notice of abandonment of his interest on the foreman, and left a copy thereof with the Mining Recorder, shall be liable for any indebtedness of the partnership incurred thereafter. *Ib.* s. 98.

¹ Derived from 1871, Rev. Laws, No. 90, s. 89; 1884, c. 10, s. 108; 1891, c. 25, s. 99, which is identical.

78. ² No such partnership shall declare any dividend until all its liabilities have been paid. *Ib.* s. 99.

² Identical with 1871, Rev. Laws, No. 90, s. 90, substituting word "company" for "partnership"; 1884, c. 10, s. 109; 1888, Consol. Acts, c. 82, s. 125; 1891, c. 25, s. 100, identical.

79. ³ Every such partnership shall appoint a foreman or manager, who shall represent the partnership, who shall sue and be sued in the name of the partnership, and his contracts in relation to the business of the partnership shall be deemed to be the contracts of the partnership. *Ib.* s. 100.

³ Derived from 1871, Rev. Laws, No. 90, s. 81, part; 1884, c. 10, s. 98, part; 1891, c. 25, s. 101, identical.

80. ⁴ No such partnership shall be liable for any other indebtedness than that contracted by its foreman or manager, or by its agent duly authorized in writing. *Ib.* s. 101.

⁴ Derived from 1871, R. L. No. 90, s. 91, which reads: "No such company shall be liable for any indebtedness contracted by any member thereof, other than its foreman or agent duly authorized;" 1884, c. 10, s. 110; 1888, Consol. Acts, c. 82, s. 126; 1891, c. 25, s. 102, identical.

81. ⁵ Should any such partnership fail to comply with any of the provisions of this Act relating exclusively to "limited liability" partnerships, such partnerships shall, from the date of such failure, cease to be a "limited liability" partnership. *Ib.* s. 102.

⁵ Derived from and identical with 1891, c. 25, s. 103.

Mining Recorders, etc., etc.

PART IV.

Mining Recorders—Appointment, Duties, Powers.

82. ⁶ The Lieutenant-Governor in Council may appoint any person to be a Mining Recorder in and for any part of the Province. *Ib.* s. 103.

⁶ Identical with 1884, c. 10, s. 19, part; 1891, c. 25, s. 104, identical.

83. ⁷ Where mineral land is discovered in a part of the Province so situate that the provisions of this Act as to free miners' certificates and records of mining property cannot be justly applied or enforced by reason of there being no Gold Commissioner or Mining Recorder in the locality, it shall be lawful for the miners of such locality to hold meetings at such times and places as may be agreed

upon, and at such meetings, by a two-thirds vote, to appoint one of their number to issue free miners' certificates and to enter records of mining property; and such certificates and records shall be valid, notwithstanding any informality therein: Provided that all records so made, and all fees for the same in accordance with the Schedule to this Act, and a list of all free miners' certificates issued, and the date and term thereof, and the fees for the same be forwarded to the nearest Gold Commissioner or Mining Recorder as soon thereafter as practicable. *Ib.* s. 104.

⁷ Substantially identical with 1884, c. 10, s. 28, substituting "auriferous" for "mineral" on first line, and omitting the proviso also; 1888, Consol. Acts, c. 82, s. 43; 1891, c. 25, s. 105, identical.

84. ⁸ Every Mining Recorder shall issue free miners' certificates and "substituted certificates" to all persons and companies entitled thereto. *Ib.* s. 105.

⁸ Identical with 1891, c. 25, s. 106.

85. ⁹ Such free miners' certificates shall be taken from a printed book of forms, with duplicate counterfoils, one of which counterfoils shall be filed in the office of the Mining Recorder. *Ib.* s. 106.

⁹ Identical with 1891, c. 25, s. 107.

86. ¹⁰ Every Mining Recorder shall keep the following books:

¹⁰ Identical with 1891, c. 25, s. 108, omitting sub-section (e).

(a.) A book to be known as the "Record Book:"

(b.) A book to be known as the "Record of Abandonments:"

(c.) A book to be known as the "Record of Affidavits:"

(d.) A book to be known as the "Record of Conveyances."

(e.) A book to be known as the "Record of Free Miners' Certificates." *Ib.* s. 107.

87. ¹ Upon receipt of an affidavit setting forth a detailed statement of work, as required by section 24, the Mining Recorder shall issue a certificate of work in the Form E in the Schedule to this Act. *Ib.* s. 108.

¹ Identical with 1891, c. 25, s. 110.

88. ² Upon issuing such certificate of work, the Mining Recorder shall file such affidavit in the Record of Affidavits, and also record such certificate of work in the Record Book. *Ib.* s. 109.

² Identical with 1891, c. 25, s. 111.

89. ³ Upon receiving a certificate of improvements, the Mining Recorder shall record the same verbatim in the Record Book. *Ib.* s. 110.

³ Identical with 1891, c. 25, s. 112.

90. ⁴ The Mining Recorder shall record all extensions of time, licenses, permits, and other privileges granted by the Gold Commissioner or Mining Recorder, and all forfeitures declared by the Gold Commissioner, and a memorandum of every judgment affecting a mineral claim or other mining property, in the Record Book. 1897, c. 28, s. 9.

⁴ Section 111, 1896; s. 9, c. 28, 1897; see 1891, c. 25, s. 113, from which it is derived.

91. ⁵ Upon any Mining Recorder issuing a free miner's certificate, or upon any free miner applying to record any mineral claim, bill of sale, or other instrument, the Mining Recorder shall enter in the free miners' certificate book the particulars of such free miner's certificate, giving number of certificate, date, place of issue, and to whom issued. *Ib.* s. 112.

⁵ Original.

92. ⁶ Upon the receipt of a notice of abandonment, the Mining Recorder shall record the same in the Record of Abandonments, and file such notice, and write across the record of the claim affected by such notice, in the Record Book, the word "Abandoned," and the date of the receipt by him of the notice. If only an interest in a mineral claim is abandoned, and not the entire claim, the memorandum in the record shall show which interest is abandoned. *Ib.* s. 113.

⁶ Derived from 1891, c. 25, s. 114.

93. ⁷ The Mining Recorder shall record, by copying out verbatim all affidavits and declaratory statements required to be recorded in connection with his office, in the Record of Affidavits. *Ib.* s. 114.

⁷ Derived from 1891, c. 25, s. 115.

94. ⁸ The Mining Recorder shall record, by copying out verbatim, in the Record of Conveyances, all conveyances, mortgages, bills of sale, contracts for sale, and other documents of title, including powers of attorney, or other authorities, to execute all or any of the above description of documents when brought to him for that purpose. *Ib.* s. 115.

⁸ Derived from 1891, c. 25, s. 116.

95. ⁹ The Mining Recorder shall record in the Record Book all other documents relating to mining property which may be brought to him for record, and shall file all such documents which may be brought to him to be filed. *Ib.* s. 116.

⁹ Derived from 1891, c. 25, s. 117.

96. ¹⁰ Every entry made in any of the above books shall show the date on which such entry was made. *Ib.* s. 117.

¹⁰ Derived from 1891, c. 25, s. 118.

97. ¹ All books of record and documents filed shall, during office hours, be open to public inspection free of charge. *Ib.* s. 118.

¹ Derived from 1884, c. 10, s. 35; 1891, c. 25, s. 119.

98. ² Every copy of, or extract from, any entry in any of the said books, or of any document filed in the Mining Recorder's Office, certified to be a true copy or extract by the Mining Recorder, shall be received in any Court as evidence of the matters therein contained. *Ib.* s. 119.

² Derived from 1871, Rev. Laws, No. 90, s. 32; 1884, c. 10, s. 36; 1888, Consol. Acts, c. 82, s. 48; 1891, c. 25, s. 120, with which it is identical.

99. ³ Upon receipt from the holder of a certificate of improvements of an application for a Crown grant in the proper form, and all moneys payable in respect of the claim for which a Crown grant is applied, the Gold Commissioner shall send such moneys, together with the undermentioned papers, to the Chief Commissioner of Lands and Works:—

³ Derived from 1891, c. 25, s. 121 and sub-sections, with these exceptions, "Mining Recorder" on 4th line for "Gold Commissioner," and "Gold Commissioner" on 5th line for "Chief Commissioner of Lands and Works," omitting "Form G" from 2nd sub-section, and for 3rd sub-section read "affidavit of the Provincial Land Surveyor"; also adding after sub-section this, (6) "an application for the Crown grant;" amended, 1893, c. 29, s. 12, identical.

- (1.) The certificate of improvements:
- (2.) Affidavit of the holder of the mineral claim, or his agent—Form G:
- (3.) A copy of the plat of the mineral claim:
- (4.) The copy of the surveyor's original field-notes:
- (5.) Mining Recorder's certificate—Form I. *Ib.* s. 120.

100. ⁴ Upon receipt from the lessee of a mill-site of all the moneys and documents mentioned in section 56, the Mining Recorder shall send the same to the Gold Commissioner. *Ib.* s. 122.

⁴ Derived from 1891, c. 25, s. 122, except figures "57" on second line.

101. ⁵ Before issuing any free miner's certificate, or substituted certificate, or certificate of work, or making any entry in any book of record, or filing any document, or making any copy or extract therefrom, the Mining Recorder shall collect the fees payable in respect thereof.

⁵ Derived from 1891, c. 25, s. 123.

Mining Divisions.

102. ⁶ It shall be lawful for the Lieutenant-Governor in Council to divide and subdivide any district into mining divisions, and to establish in each mining division a Mining Recorder's office. *Ib.* s. 123.

⁶ See 1871, R. L. No. 90, ss. 4 & 5, appointing Gold Commissioners and Mining Court; 1884, c. 10, s. 19; 1891, c. 25, s. 125, with which it is identical.

103. ⁷ Upon the establishment of a mining division, and the opening of a Mining Recorder's office therein, under the authority of the last preceding section—

⁷ Section 124, revised 1896; s. 10, c. 28, 1897; derived from 1891, c. 25, s. 126, and sub-sections (a) and (b). The material differences are: 1st, the omission of the words "not held as real estate" where they occur on line 4th, sub-section (a); 2nd, in sub-section (b), on line 5, "s. 108" for "107;" 3rd, omission of words "not held as real estate" on line 4th in s.-s. (b), otherwise almost identical.

See *Kilbourne v. McGuigan*, (1897) 5 B. C. R. 233.

- (a.) Such office, and none other, shall be the proper office for recording all claims, records, certificates, documents, or other instruments affecting claims, mines or mining property situate within such mining division not held as real estate; and whenever, by this Act, or any Act amending the same, anything is required to be done at or in the office of the Gold Commissioner or Mining Recorder of the district, it shall, if the same affects or concerns any claim, mine or mining property situate within a mining division not held as real estate, be done at or in the office of the Mining Recorder of the mining division wherein such claim or mine, or other mining property, is situate:
- (b.) Upon the district or division of any Mining Recorder being divided or subdivided into mining divisions, it shall be the duty of such Mining Recorder to make, or cause to be made, a transcript of all the entries in all the books mentioned in section 86, affecting claims, mines or mining property situate in each newly created mining division not held as real estate, and to forward the same to the Mining Recorder of such mining division, and such transcript shall be kept in such office as part of the records of such office, and all transcripts of such records, certificates, documents, or other instruments shall *prima facie* be deemed to be true copies of the several records, certificates, documents or other instruments of which they purport to be transcripts; and such transcripts or copies thereof, when certified by the Mining Recorder of the mining division in whose office they are kept, shall be admissible in evidence in all Courts of Judicature in this Province. 1897, c. 28, s. 10.

104. ⁸ When there shall be no Mining Recorder for a district or division, the duties of the Mining Recorder shall devolve upon the Gold Commissioner, and it shall at all times be lawful for the Gold Commissioner to perform the duties of the Mining Recorder, and the Gold Commissioner shall have all the powers of a Mining Recorder. *Ib.* s. 125.

⁸ Derived from 1891, c. 25, s. 127.

105. ⁹ The Mining Recorder's office shall be open upon such days and hours as the Lieutenant-Governor in Council may from time to time appoint, and failing any particular appointment shall be kept open upon all days, excepting public holidays, from 9 a.m. to

4 p.m. and such times shall be deemed the office hours of such office.
Ib. s. 126.

⁹ Section 126, 1896, derived from 1891, c. 25, s. 128, reading "10 a.m." for "9 a.m." on 4th line.

PART V.

GOLD COMMISSIONERS.

Appointment and Ministerial Powers.

106. ¹⁰ The Lieutenant-Governor in Council may from time to time appoint such persons as he shall think proper to be respectively Chief Gold Commissioner and Gold Commissioners, either for the whole Province or for any particular districts therein, and from time to time in like manner fix and vary the limits of and subdivide such districts, and make and revoke all such appointments. C. A. 1888, c. 82, s. 4.

¹⁰ Derived from 1871, Rev. Laws, No. 9, s. 4, reading "Governor" for "Lt.-Governor in Council" on 1st line, and "Colony" for "Province" on 4th line; otherwise identical.

Tunnels and Drains.

107. ¹ It shall be lawful for, but not incumbent upon, the Gold Commissioner to grant a license to any free miner, being the lawful holder of a mineral claim or mine held as real estate, to run a drain or tunnel, for any purpose connected with the development or working of such claim or mine, through any occupied or unoccupied lands, whether mineral or otherwise, upon security being deposited or given to him, to his satisfaction, for any damage that may be done thereby, and upon such other terms as he shall think fit. *Ib.* s. 127.

¹ See 1871, Rev. Laws, No. 90, s. 69; see also 1884, c. 10, s. 85; 1888, Consol. Acts, c. 82, ss. 101 & 102, but identical with 1891, c. 25, s. 129.

[Sections 128 to 134, of the Act of 1896, inclusive, repealed by 1897, c. 28, s. 19.]

Working of Mines or Claims, and other Powers.

108. ² The Gold Commissioner may, in his discretion, permit a free miner to re-locate a mineral claim, or any part thereof, which may have been abandoned or forfeited by such free miner: Provided

that such re-locations shall not prejudice or interfere with the rights or interest of others. *Ib.* s. 135.

² Derived from 1891, c. 25, s. 139.

109. ³ The Gold Commissioner may mark out a space of ground for deposits of leavings and deads from any tunnel, claim, or mining ground, upon such terms as he may think just. *Ib.* s. 136.

⁴ Derived from 1891, c. 25, s. 140.

110. ⁴ The Gold Commissioner shall have the power to summarily order any mining works to be so carried on as not to interfere with or endanger the safety of the public, any public work or highway, or any mining property, mineral claims, mining claims, bed-rock drains, or bed-rock flumes; and any abandoned works may by his order be either filled up or guarded to his satisfaction at the cost of the parties who may have constructed the same, or, in their absence, upon such terms as he shall think fit. *Ib.* s. 137.

⁵ Derived from 1891, c. 25, s. 141.

111. ⁵ Notwithstanding anything contained in the "Gold Mining Amendment Act, 1873," or in any Crown grant issued under the said Act, or under this or any other Act, it shall be lawful for the Gold Commissioner, in his discretion, and with or without any terms or conditions, to allow to the owners of mineral claims all such rights or privileges in and over mineral or other claims held as real estate as may be allowed in and over claims not so held; and owners of claims held as real estate shall be entitled to the same rights and privileges as owners of claims not so held. *Ib.* s. 138.

⁶ Derived from 1891, c. 25, s. 142.

112. ⁶ Upon receiving an application for a mill-site from any free miner, and upon proof being furnished to his satisfaction of the non-mineral character of the land applied for, and the deposit in duplicate of a plat of said land, and upon proof by affidavit that the applicant has complied with the requirements of section 54 of this Act, the Gold Commissioner shall issue to the applicant a lease of such land for one year, in the form in the Schedule to this Act. *Ib.* s. 139.

⁷ Derived from 1891, c. 25, s. 143, substituting "section 55" for "section 54" on 5th line.

113. ⁷ Upon being satisfied that the lessee of a mill-site has put or constructed thereon works or machinery for mining or milling

purposes to an amount of not less than five hundred dollars, the Gold Commissioner shall issue his certificate to that effect. *Ib.* s. 140.

⁷ Derived from 1891, c. 25, s. 144.

114. ⁸ Upon receipt from the Mining Recorder of the moneys and documents mentioned or referred to in section 100, the Gold Commissioner shall satisfy himself that the same are in order, and then forward the same to the Chief Commissioner of Lands and Works. *Ib.* s. 141.

⁸ Derived from 1891, c. 25, s. 145, adding "or 122" after "121" on 2nd line; amended, 1893, c. 29, s. 13, identical.

115. ⁹ The Gold Commissioner shall have power to do all things necessary or expedient for the carrying out of the provisions of this Act. *Ib.* s. 142.

⁹ Derived from 1891, c. 25, s. 146. Without express authority the Gold Commissioner would have implied authority to do all things necessary to carry out the provisions of the Act for *quando aliquid mandatur, mandatur et omne per quod, per venit ad illud*.

Administration.

116. ¹⁰ The Gold Commissioner, or any person authorized by him shall take charge of all the property, within the district of such Commissioner, of any deceased free miner until the issue of letters of administration or probate of the will, if any, and may cause any mineral claims held or owned to be duly represented or dispense therewith at his option: Provided, however, that where any free miner shall die intestate, and the value of the personal estate of such deceased free miner is less than three hundred dollars, it shall not be necessary for the Gold Commissioner to obtain from any Court letters of administration, but in such case the Gold Commissioner may administer and wind up the personal estate of the deceased, and do all things necessary and proper therefor, and act in all respects as if letters of administration to the personal estate of such deceased free miner had been granted to such Gold Commissioner, and the Gold Commissioner shall produce and pass his accounts, in each estate of which he shall undertake the administration, before a Judge of the County Court of the district.

¹⁰ Section 143, 1896; s. 26, c. 28, 1897; see R. L. No. 90, ss. 98-99; also 1884, c. 10, ss. 116, 117; 1888, Consol. Acts, c. 82, ss. 132-3; 1891, c. 25, s. 148.

Omits after word "property," on 2nd line, "within the district of such Commissioner;" and omits after the word "any" on 4th line, the words "and may cause mineral claims held or owned to be duly represented or dispensed therewith at his option," otherwise identical. 1892, c. 32, s. 24, amends to read identical; s. 143 (a) 1896; s. 20, c. 28, 1897, original.

- (a) The Gold Commissioner or person authorized by him as aforesaid shall be governed by the provisions of the "Official Administrators Act," and any Rules and Regulations thereunder. 1897, c. 28, s. 20.

PART VI.

Jurisdiction, Procedure, Forms, and Costs.

COUNTY COURTS.

117. ¹In addition to the jurisdiction and powers given to County Courts by the "County Courts Jurisdiction Act," and other Acts, every County Court shall have and exercise, within the limits of its district, all the jurisdiction and powers of a Court of Law and Equity—

¹ Section 144 and s.-ss. (1) to (11), s. 1871, R. L. No. 90, s. 6, as to jurisdiction of Gold Commissioner, and Mining Court jurisdiction as a Court of Law and Equity. This is continued in 1888, Consol. A., c. 82, s. 6; 1891, c. 25, s. 149, and s.-ss. (1) to (10). Identical; s.-s. (11) is original.

In *Corbin v. Lookout Mining and Milling Company (Foreign)*, (1897) 5 B. C. R. 281, the Supreme Court held that sections 144-150 refer only to procedure in the County Courts.

Per McCreight, J. (*Ib.* p. 282): "I think the right to trial by jury in mining cases in the Supreme Court is not changed by the Mineral Act, 1896," etc.

Per Davie, C.J. (*Ib.* p. 283): "The right of the grantee from the Crown of a mineral claim is not a right to the land or to the possession of it, as land. One person may be the owner of the land and another person may acquire the right to the minerals thereunder, together with the incidental surface rights given by the Mineral Acts."

- (1.) In all personal actions, where the debt or damages claimed arise directly out of the business of mining (other than coal mining), or from the exercise of or interference with any right, power, or privilege given, or claimed to be given, by this Act or any other Act relating to mining (other than coal mining):

- (2.) In all actions between employers and employees, where the employment is directly connected with the business of mining (other than coal mining):
- (3.) In all actions for supplies to persons engaged in mining, where such supplies were bought, contracted for, or supplied, or were alleged to have been bought, contracted for, or supplied for mining purposes, or for consumption by persons engaged in mining or prospecting:
- (4.) In all actions of trespass on or in respect of mineral claims or other mining property, or upon or in respect of lands entered or trespassed on, or claimed to have been entered or trespassed on, in searching for, mining, or working minerals (other than coal), or for any other purpose directly connected with the business of mining (other than coal mining), or in the exercise of any power or privilege given, or claimed to be given, by this Act, or any other Act relating to mining (other than coal mining):
- (5.) In all actions of ejectment from mineral claims or other mining property, or from lands entered, or claimed to have been entered, in searching for, mining, or working minerals (other than coal), or for any purpose directly connected with the business of mining, or entered, or claimed to have been entered, under some power, right or authority given or obtained under the provisions of this Act, or any other Act relating to mining (other than coal mining):
- (6.) In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge or lien shall be on mineral claims, mines, or other mining property:
- (7.) In all suits for specific performance of, or for reforming, or delivering up, or cancelling any agreement for sale, purchase, or lease of any mineral claim, mine, or other mining property:
- (8.) In all suits for the dissolution or winding up of any mining partnership, whether registered or not, under the provisions of this Act:
- (9.) In all suits relative to water rights claimed under this Act, or any other Act relating to mining (other than coal mining):

- (10.) In all proceedings for orders in the nature of injunctions, where the same are requisite for the granting of relief in any matter in which jurisdiction is given to the County Court by this Act:
- (11.) Provided, always, that at any time during the progress of any action, suit or matter relating to or concerning any of the classes of subjects in this section before referred to and enumerated, any of the parties to such action, suit or matter may apply by summons to any Judge of the Supreme Court at Chambers for an order directing the transfer of such action, suit or matter into the Supreme Court, and upon such summons any Judge of the Supreme Court may, if satisfied that it is expedient such action, suit or matter should be so transferred, make an order directing the transfer of such action, suit or matter into the Supreme Court, and may in and by such order give all necessary directions for effectually procuring and completing such transfer, and may make such order as to costs, as well of the proceedings theretofore had and taken in the County Court as of such summons, as he may think fit, and from and after the making of any such order for transfer into the Supreme Court all proceedings in respect of such action, suit or matter, shall be had and determined in the Supreme Court, and the jurisdiction of the County Court in respect thereof shall absolutely cease and determine. The Supreme Court, or a Judge thereof, shall have discretion to order that any case so transferred shall be heard, tried or disposed of without pleadings. *Ib.* s. 144.

118. The jurisdiction given to County Courts by this Act shall be known as the "mining jurisdiction" of the County Court, and the words "mining jurisdiction" shall be written or printed on all summonses, writs and other process, and all other documents in every action or cause brought under the mining jurisdiction of the County Court. *Ib.* s. 145.

In substance same as 1884, c. 10, s. 9; 1891, c. 25, s. 150, is identical.

Burk v. Tunstall, (1890) 2 B. C. R. 12. (Drake, J.) It is competent to the Province to create Mining Courts and to fix their jurisdiction, but not to appoint any officers thereof with other than ministerial powers.

This was an application for a writ of prohibition against George Tunstall to restrain him as Gold Commissioner for West Kootenay from further proceeding in an action brought in his Court under powers

given to him as a Gold Commissioner sitting as a Judge in a Mining Court under section 11 of the Mineral Act, 1888.

In *Atkins v. Coy*, (1895) 5 B. C. R. 10, Walkem, J., in giving judgment for the Court, decided the Full Court has upon an appeal complete jurisdiction, under section 29 of the Mineral Act, 1888, which provided that "An appeal shall lie from any judgment of a Mining Court or of a County Court in a mining cause to the Supreme Court at Victoria, sitting as a Full Court," etc., over the whole subject, and power to grant a new trial, as an alternative, whether moved for or not, and said, p. 11: "The policy of the Act is the same as that of the Judicature Act, and of Order LVIII., Rule 6, that a judgment of a Court of Appeal should cover the whole subject."

By section 29 of the Mineral Act, C. S. B. C. 1888, the Supreme Court of British Columbia "can hear *de novo*, order a new trial or enter up a new judgment for one or other of the litigants." Per Drake, J., *Atkins v. Coy*, (1897) 5 B. C. R. at p. 19.

The provision in this section, that appeals from judgments of Mining Courts "may be in the form of a case settled and signed by the parties," is not imperative, but such appeals may be brought in the same form as in ordinary cases. *Kinney v. Harris*, (1897) 5 B. C. R. 229.

119. County Courts and County Court Judges, Registrars, Sheriffs, and other officers, shall have the same duties, powers, privileges, and authorities in all actions and suits, and other proceedings brought under the mining jurisdiction of the County Court, as they now have, or at any time hereafter may have, in actions and suits and other proceedings brought under the ordinary jurisdiction of the County Court, and the provisions of all Acts for the time being in force regulating the duties and powers of County Courts and County Court Judges, Registrars, Sheriffs, and other officers, and regulating the practice and procedure in County Courts, and all Rules and Orders for the time being applicable to the ordinary jurisdiction of the County Court, shall, so far as practicable and not inconsistent with this Act, apply to the mining jurisdiction of the County Court. *Ib.* s. 146.

120. Where disputes arise concerning mining property, portions whereof are situated in adjoining or different districts, the County Court of either of such districts before which the dispute is first brought shall determine it. *Ib.* s. 147.

121. The hearing of any summons, plaint, or other process in any County Court shall not be deferred beyond the shortest reasonable time necessary in the interests of all parties concerned, and it

shall be lawful for the Registrar to make summonses or other proceedings returnable forthwith, or at any other time. *Ib.* s. 148.

122. In all mining actions or suits the Court may decide the question at issue upon the ground in dispute, and such decision shall be entered as in ordinary cases, and have the same virtue and effect as if rendered in Court. *Ib.* s. 149.

123. In any mining cause or suit, either party may require that the issues of fact shall be tried by a jury, and the Judge may, before delivering judgment in any action, suit, or other proceeding, direct all or any issues of fact to be found by a jury. *Ib.* s. 150.

124. In all actions, suits, and other proceedings within the mining jurisdiction of the County Court, the Judge may order that costs be taxed on the higher or lower scale allowed by the County Court Rules; or if he shall consider the case of sufficient importance, he may order that costs be taxed as in the Supreme Court, and the costs so ordered shall be the costs recoverable in such action, suit, or other proceeding. *Ib.* s. 151.

125. Every County Court having jurisdiction in mining disputes shall, with reference to real estate held under the "Gold Mining Amendment Act, 1873," or under this Act, and notwithstanding any law to the contrary, have the same powers and authorities to decide all matters or disputes arising between the owners thereof, or between the owners thereof and any third person, or between mining joint stock companies, or between shareholders therein, or between them and the company, in the same way and as fully as it might do concerning claims not being real estate; and actions, suits, and other proceedings relating to such matters or disputes shall be brought and had in the same manner as actions, suits, or proceedings relating to mining claims not being real estate. *Ib.* s. 152.

126. Any County Court Judge having jurisdiction in mining causes, may direct the issuing of writs of *capias ad respondendum*, *ne exeat regno*, and special orders for the arrest and detention of a judgment debtor in all cases in which by law he has jurisdiction over the subject-matter of the suit, but under and subject to such conditions as a Judge of the Supreme Court might usually require in applications of a similar nature. *Ib.* s. 153.

127. The owner of a mineral claim who has had his claim surveyed within one year from the date of the record of the claim, or if the claim was recorded before the passing of this Act, then if surveyed before the first day of May, 1899, and has filed in the office of the Mining Recorder in the mining division in which the claim is situated, a declaration by a Provincial Land Surveyor, stating that he has surveyed the claim as required in sub-section (c) of section 36 of "The Mineral Act," and that he has delivered two plats of the claim and a copy of the original field notes to the owner of such claim, then the owner of such claim shall be entitled to have the cost of such survey, not to exceed one hundred dollars, counted as work done on the claim. ("The Mineral Act Amendment Act, 1898," s. 10.)

128. The owner of a mineral claim (located on waste lands of the Crown, or on lands not already occupied for other than mining purposes) for which a Crown grant has issued or may hereafter issue, shall, so long as the surface rights thereof remain in the Crown unencumbered and unreserved, be entitled to receive a Crown grant of such surface rights, on payment to the Government of British Columbia of the sum of five dollars per acre for such land, and a fee of five dollars for the Crown grant. ("The Mineral Act Amendment Act, 1898," s. 12.)

129. When a lode is supposed to cross a valley or under an alluvial deposit, and where such lode is indicated by its appearance on the side of the mountain leading into such valley, any free miner upon making a sworn statement before the Mining Recorder or Gold Commissioner of the District that there is a lode which has indications of running through and under such alluvial deposit, shall be entitled to a permit for three months to search for such lode over the area of a mineral claim, with the privilege of having such permit extended, on his proving to the satisfaction of the Gold Commissioner that he has bona fide searched for such lode and has expended, either in cash or labour, or both, not less than one hundred dollars in such search. During the existence of such permit the ground covered by the same shall not be open to record by any other miner. The fee for such permit, and each renewal of the same, shall be the same as the fee for a record. 1897, c. 28, s. 13.

130. No free miner shall be entitled to any interest in any mineral claim which has been located and recorded by any other free

miner unless such interest is specified and set forth in some writing signed by the party so locating such claim. 1897, c. 28, s. 14.

131. If any person shall in any suit or matter claim an adverse right of any kind to the mineral claim comprised in any record, or to any part thereof, or shall claim that any record is invalid, or has been improperly obtained, or that the holder thereof has not complied with the provisions of the Act under which the location and record were made, or has not prior to the obtaining of such record made a good and valid location of such mineral claim according to law, the onus of proof thereof shall be on the person so claiming an adverse right, or so claiming that such record is invalid and has been improperly obtained as aforesaid, and in default of such proof judgment shall be given for the holder of such prior record in so far as such action, suit or matter relates to any of the matters aforesaid. 1897, c. 28, s. 15.

132. Notwithstanding the repeal of any Acts relating to mineral claims, or the saving clauses of any such repealing Acts, all such repealing Acts shall be deemed to have contained provisions declaring the holders of records of mineral claims entitled to apply for Crown grants thereof under the provisions of the law in force at the time of such applications, and that the procedure upon any such applications shall be that prescribed by the Statutes in force at the time of such applications, the grants thereafter vesting in the holders such rights as were declared by the Statutes in force at the date of record of such mineral claims: Provided, however, that nothing contained in this section shall impair or in any way restrict the rights and privileges conferred on owners of mineral claims by the preceding section of this Act. 1897, c. 28, s. 16.

133. All Crown grants heretofore issued to the holders of mineral claim records shall be deemed to have been validly issued so far as relates to the procedure upon the application to obtain same, if in the application therefor the holder thereof observed either the procedure prescribed by the Statutes in force at the time of the record of such mineral claims, or the procedure prescribed by the Statutes in force at the time of the applications for Crown grants thereof. 1897, c. 28, s. 17.

134. Nothing herein contained or enacted shall affect any litigation pending at the time of the passage of this Act. 1897, c. 28, s. 18.

135. Sections 5, 6, 13, 19, 20, 22, 27, 28 and 29 of the "Mineral Act" being chapter 82 of the "Consolidated Acts, 1888," are hereby repealed. 1897, c. 28, s. 21.

PART VII.

Penal and Miscellaneous.

136. Any person wilfully acting in contravention of this Act, or refusing to obey any lawful order of the Gold Commissioner or of any Judge presiding in a Court shall, on conviction thereof in a summary way before any two Justices of the Peace or a Stipendiary Magistrate, or before any Judge of a Court having jurisdiction in mining disputes, be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment, with or without hard labour, for any term not exceeding three months. *Ib.* s. 154.

137. All fines and penalties imposed or payable under this Act may be recovered by distress and sale of any mining or other personal property of the offender; and in default of sufficient distress by imprisonment, with or without hard labour, not exceeding three months. *Ib.* s. 155.

138. All fines, fees and penalties collected under this Act shall be paid into the Consolidated Revenue Fund of British Columbia. *Ib.* s. 156.

139. Nothing herein contained shall, save where such intention is expressly stated, be so construed as to affect prejudicially any mining rights and interests acquired prior to the passing of this Act; and all mining rights and privileges heretofore and hereunder acquired shall, without the same being expressly stated, be deemed to be taken and held subject to the rights of Her Majesty, Her heirs and successors, and to the public rights of way and water. *Ib.* s. 157.

140. Every free miner, on application to the Mining Recorder of the district, shall be entitled to a printed copy of this Act on payment of the sum of twenty-five cents. *Ib.* s. 158.

141. Affidavits and declarations made under the provisions of this Act shall be made before some Judge or Registrar of a Court of Record, or before some Gold Commissioner, Mining Recorder, Stipendiary Magistrate, Justice of the Peace, Notary Public, or Commissioner for taking affidavits. *Ib.* s. 159.

142. The Minister of Mines and the Provincial Inspector or Mineralogist shall have the right to enter into or upon and examine any mineral claim or mine within the meaning of this Act. *Ib.* s. 160.

Rules and Regulations.

143. The Lieutenant-Governor in Council may make such orders as are deemed necessary from time to time to carry out the provisions of this Act according to their true intent, or to meet the cases which may arise and for which no provision is made in this Act, or when the provision which is made is ambiguous or doubtful; and may also make regulations for relieving against forfeitures arising under section 9 of this Act; and may further make and declare any regulations which are considered necessary to give the provisions in this clause contained full effect; and from time to time alter or revoke any order or orders or any regulations made in respect of the said provisions, and make others in their stead; and further impose penalties not exceeding two hundred dollars, or not exceeding three months' imprisonment, for violation of any regulations under this Act; and further provide that any statement or returns required to be made by said regulations shall be verified on oath. Every order or regulation made by virtue of the provisions of this section shall have force and effect only after the same has been published for two successive weeks in the British Columbia Gazette; and such orders or regulations shall be laid before the Legislative Assembly within the first fifteen days of the Session next after the date thereof. *Ib.* s. 161.

Taxation of Mines and Moneys Invested Therein.

144. Notwithstanding anything contained in this Act, mines and moneys invested therein shall not be exempt from taxation, but shall bear such rate as may be imposed by any law in the Province. *Ib.* s. 162.

145. There shall be levied and collected from the owner or occupier of every mineral or placer claim of which a Crown grant has issued, including Crown grants issued under authority of an Act made and passed in the 36th year of Her Majesty's reign, intituled "An Act to amend the 'Gold Mining Ordinance, 1867,' and the 'Gold Mining Amendment Act, 1872,'" an annual tax of twenty-five cents for every acre and fractional part of an acre of land conveyed by the grant, payable on the thirtieth day of June in each year. Such tax shall form a charge upon the claim. The Assessor appointed under or by virtue of any existing Assessment Act, or any Collector appointed under the "Provincial Revenue Tax Act," is hereby authorized, as to the mineral or placer claims situate within the district for which he is appointed, to collect and receive the tax. In the event of the tax not being paid to the Assessor or Collector, the Gold Commissioner may in his discretion cause the claim upon which the tax is charged to be offered for sale by public auction, of which sixty days' notice shall be posted upon the principal Court House of the district in which the claim is situate, and in one newspaper, if any, published in such district, and may sell such claim, receive the purchase money, and execute a conveyance thereof to the purchaser. The purchase money shall be applied in payment of the expenses of advertising and the payment of the tax, and any surplus shall be paid into the Treasury in trust for the owner of the claim. In the event of there being no purchaser, or if the price offered shall not be sufficient to pay the tax and expenses of advertising, the land shall absolutely revert to the Province, and the Crown grant thereof shall be deemed void. The Assessor or Collector may, before offering the claim for sale, sue the owner or occupier for the tax, in a summary manner, before any Justice of the Peace, who may adjudge the same to be paid; and in default of payment the amount due, together with costs, may be recovered by distress of the goods and chattels of the person against whom the tax may be recovered: Provided, that if the owner of any such mineral or placer claim shall establish, to the satisfaction of the Gold Commissioner, Mining Recorder, or Assessor and Collector of the district in which the claim lies, that the sum of two hundred dollars has been expended thereon in labour or improvements in any one year, then the tax shall not be levied in respect of such claim for such year. *Ib.* s. 163.

146. Where a claim has been recorded under any name, and the owner or his agent is desirous of changing the same the Recorder

of said mining division may, upon application being made by such owner or agent, and upon payment of a fee of twenty-five dollars, amend the record accordingly: Provided, however, that such change of name shall not in any way affect or prejudice any proceedings or execution against the owner of the said claim. *Ib.* s. 164.

147. Whenever through the acts or defaults of any person other than the recorded owner of a mineral claim or his agent by him duly authorized, the evidence of the location or record on the ground, or the situation of a mineral claim, has been destroyed, lost, or effaced, or is difficult of ascertainment, nevertheless, effect shall be given to same as far as possible, and the Court shall have power to make all necessary enquiries, directions and references in the premises, for the purpose of carrying out the object hereof, and vesting title in the first *bona fide* acquirer of the claim. *Ib.* s. 165.

PART VIII.

Repealing Clause.

148. The Acts and parts of Acts mentioned in this section shall stand repealed and be repealed; but such repeal shall not be deemed to imply that any of the said Acts or parts of Acts which have been repealed at any time prior to the passing of this Act have been in force since such repeal: Provided further, that such repeal shall not affect any rights acquired, or any liabilities or penalties incurred, or any act or thing done, under any of the said Acts or parts of Acts:—

The “Mineral Act, 1891,” the “Mineral Act (1891) Amendment Act, 1892,” the “Mineral Act (1891) Amendment Act, 1893,” the “Mineral Act Amendment Act, 1894,” and the “Mineral Act Amendment Act, 1895,” are hereby repealed. *Ib.* s. 166.

NOTE.—For the law relating to the acquisition of water rights, see “Water Clauses Consolidation Act, 1897.” R. S. B. C. 1897, c. 190. See Appendix I.

For Forms referred to in this Act, see Appendix II.

AN ACT TO AMEND "THE MINERAL ACT."

R. S. B. C. (1897), Chapter 135.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. This Act may be cited as "The Mineral Act Amendment Act, 1898."

2. Section 2 of "The Mineral Act" is hereby amended by striking out all the words after "stone" on the 15th line of said section down to and including the word "purposes" on the 16th line.

3. Section 15 of the said Act is amended by adding as sub-section (a) the following: (See section 15 (a) of principal Act.)

4. Section 16 of the said Act is hereby repealed and the following enacted in lieu thereof: (See section 16 of principal Act.)

5. Section 24 of the said Act is hereby amended by adding the following: (See section 24 of principal Act.)

6. Section 35 of the said Act is hereby repealed, and the following substituted in lieu thereof: (See section 35 of principal Act.)

7. Sub-section (a) of section 36 of the said Act is hereby repealed, and the following substituted in lieu thereof: (See section 36 (a) of principal Act.)

8. Sub-section (g) of section 36 of the said Act is hereby repealed, and the following substituted in lieu thereof: (See section 36 (g) of principal Act.)

9. Section 37 of the said Act is repealed and the following substituted: (See section 37 of principal Act.)

10. Section 127 of the said Act is hereby repealed and the following substituted in lieu thereof: (See section 127 of principal Act.)

11. In any adverse proceedings hereafter brought before the Court under "The Mineral Act," each party to such proceedings shall give affirmative evidence of title to the ground in controversy, and if such title shall not be established by either party the Judge shall so find, and judgment shall be entered according to such finding without costs to either party.

12. Section 128 of "The Mineral Act" is hereby repealed, and the following substituted therefor: (See section 128 of principal Act.)

13. Clause 2 of Form G of the Schedule to the said Act is hereby repealed, and the following substituted in lieu thereof: (See Clause 2, Form G, Schedule to principal Act.)

14. The Schedule of Fees of the said Act is hereby amended by inserting after the word "work," in line eight, the following, "and filing affidavit."

15. Section 47 of the said Act is hereby repealed, and the following enacted in lieu thereof: (See section 47 of principal Act.)

16. Everyone is guilty of an offence against this Act, and liable, on summary conviction before two justices of the peace, to imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred and fifty dollars, or to both, who wilfully pulls down, defaces, alters or removes any legal post lawfully erected, planted, placed or standing, to mark the boundaries or location of a mineral claim, or any writing by law required to be thereon.

17. On the passage of this Act, the Chief Commissioner of Lands and Works shall at once cause the duplicate field notes of the surveys of all mineral claims to which Crown grants have been issued, or may hereafter be issued, to be filed, for reference, in the office of the Mining Recorder in the mining division within which the mining claims are situated.

BRITISH COLUMBIA.

CHAPTER XIV.

(Revised Statutes of British Columbia (1897), Chapter 136.)

An Act relating to Placer Mines (as amended by "The Placer Mining Act (1891) Amendment Act, 1898."

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

1. This Act may be cited as "The Placer Mining Act," 1891, c. 26, s. 1.

Interpretation.

2. ¹ In the construction of this Act the following expressions shall have the following meanings respectively, unless inconsistent with the context:—

¹ 1896, c. 35, s. 2.

"Mine," "placer mine," and "diggings" shall be synonymous terms, and shall mean any natural stratum or bed of earth, gravel or cement mined for gold or other precious minerals or stones;

"Placer claim" shall mean the personal right of property or interest in any placer mine; and in the term "mining property" shall be included every placer claim, ditch, or water

right used for placer mining purposes, and all other things belonging thereto or used in the working thereof. Placer claims shall be divided into creek diggings, bar diggings, dry diggings, bench diggings, and hill diggings;

"Creek diggings" shall mean any mine in the bed of any river, stream, or ravine, excepting bar diggings;

"Bar diggings" shall mean any mine over which a river extends when in its flooded state;

"Dry diggings" shall mean any mine over which a river never extends;

"Bench diggings" shall mean any mine on a bench, and shall, for the purpose of defining the size of a claim in bench diggings, be excepted from "dry diggings";

"Hill diggings" shall mean any mine on the surface of a hill, and fronting on any natural stream or ravine;

"Precious stone diggings" shall mean deposit of precious stones, whether in veins, beds, or gravel deposits;

"Streams and ravines" shall include all natural water-courses whether usually containing water or not, and all rivers, creeks, and gulches;

"Ditch" shall include a flume, pipe, race, or other artificial means for conducting water by its own weight, to be used for mining purposes;

"Ditch head" shall mean the point in a natural water-course or lake where water is first taken into a ditch;

"Free Miner" shall mean a person, or joint stock company, or foreign company named in, and lawfully possessed of, a valid existing free miner's certificate, and no other;

"Legal post" shall mean a stake standing not less than four feet above the ground, and squared or faced on four sides for at least one foot from the top, and each side so squared or faced shall measure at least four inches on its face so far as squared or faced, or any stump or tree cut off and squared or faced to the above height and size;

- "Record," "register," and "registration," shall have the same meaning, and shall mean an entry in some official book kept for that purpose;
- "Record," when used without qualifying words showing that a different matter is referred to, shall be taken to refer to the record of the location of a placer claim;
- "Full interest" shall mean any placer claim of the full size, or one of several shares into which a mine may be equally divided;
- "Close season" shall mean the period of the year during which placer claims in any district are laid over by the Gold Commissioner of that district;
- "Cause" shall include any suit or action;
- "Judgment" shall include "order" or "decree;"
- "Real estate" shall mean any placer mineral land held in fee simple;
- "Joint Stock Company" shall mean any company for mining purposes: (a) Incorporated under the "Companies Act, 1897," or any Act repealed thereby; or (b) registered as a foreign company under any Act repealed by the "Companies Act, 1897;" or (c) licensed or registered as an extra Provincial company under the "Companies Act, 1897;" or (d) incorporated by any special Act. 1896, c. 35, s. 2, and 1897, c. 29, s. 2.

PART I.

Free Miners, and their Privileges.

3. Every person over, but not under, eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a free miner, and shall be considered a free miner, upon taking out a free miner's certificate. A minor who shall become a free miner, shall, as regards his mining property and liabilities contracted in connection therewith, be treated as of full age. A free miner's

certificate issued to a joint stock company shall be issued in its corporate name. A free miner's certificate shall not be transferable. 1891, c. 26, s. 3.

4. A free miner's certificate may be granted to a free miner for one or more years to run from the date thereof, or from the expiration of the applicant's then existing certificate, and to a joint stock company for the period ending on the 30th day of June, after the issue of the certificate, next ensuing, upon the payment therefor of the fees set out in the Schedule of Fees to this Act. Only one person or one joint stock company¹ shall be named therein. 1891, c. 26, s. 4; 1897, c. 2, s. 161.

¹Notwithstanding anything to the contrary in section 4 of the "Mineral Act, 1896," or section 4 of the "Placer Mining Act, 1891," or elsewhere in the said Acts, or other the mining laws of the Province, no free miner's certificate shall be issued to a joint stock company for a longer period than one year, and such certificate shall date from the 30th day of June in each year; and every free miner's certificate held by a joint stock company at the passing of this Act shall be valid and existing until and shall expire on the 30th day of June, 1897. Upon applying to renew any such certificate on or before said 30th day of June, the joint stock company shall be entitled to a rebate of a proportionate amount of the fee paid for a certificate heretofore issued, according to the further time for which it would, but for this section, have been valid. See 1897, c. 2, s. 161.

5. A free miner's certificate shall be in the following form:—

BRITISH COLUMBIA.

Free Miner's Certificate.

NOT TRANSFERABLE.

Date,		No.
	Valid for	year only.
This is to certify that		of
this day the sum of		has paid me
privileges of a free miner, for		, and is entitled to all rights and
of	year from the	day
, 18 .		

(Signature of Gold Commissioner or Mining Recorder, as the case may be.) 1891, c. 26, s. 5.

6. If any person or joint stock company shall apply for a free miner's certificate at the Mining Recorder's office during his absence, and shall leave the fee required by this Act with the officer or other person in charge of the said office, he or it shall be entitled to have such certificate from the date of such application; and any free miner shall at any time be entitled to obtain a free miner's certificate commencing to run from the expiration of his then existing free miner's certificate, provided that when he applies for such certificate he shall produce to the Mining Recorder, or in case of his absence, shall leave with the officer or other person in charge of the Mining Recorder's office, such existing certificate. 1891, c. 26, s. 6.

7. If any free miner's certificate be accidentally destroyed or lost the owner thereof may, on payment of the fees set out in the Schedule to this Act, have a true copy of it, signed by the Mining Recorder, or other person by whom or out of whose office the original was issued. Every such copy shall be marked "substituted certificate;" and unless some material irregularity be shown in respect thereof, every original or substituted free miner's certificate shall be evidence of all matters therein contained. 1891, c. 26, s. 7.

8. Every person and joint stock company engaged in placer mining shall take out a free miner's certificate, and any person or joint stock company who mines or works as a miner in any placer claim, or on any bed-rock flume, drain or ditch, without having taken out and obtained such certificate, shall, on conviction thereof in a summary way, forfeit and pay a penalty not exceeding twenty-five dollars, besides costs: Provided, always, that nothing herein contained shall prejudice the right to collect wages or payment for work done by any person or company, who, through not being a free miner, has rendered himself or itself liable to the above penalty. 1891, c. 26, s. 8.

9. No person or joint stock company shall be recognized as having any right or interest in or to any placer claim, mining lease, bed-rock flume grant, or any minerals in any ground comprised therein, or in or to any water right, mining ditch, drain, tunnel, or flume, unless he or it shall have a free miner's certificate unexpired. And on the expiration of a free miner's certificate the owner thereof shall absolutely forfeit all his rights and interest in or to any placer claim, mining lease, bed-rock flume grant, and any minerals in any ground comprised therein, and in or to any and every water right, mining ditch, drain, tunnel, or flume, which may be held or claimed by such

owner of such expired free miner's certificate, unless such owner shall, on or before the day following the expiration of such certificate, obtain a new free miner's certificate: Provided nevertheless, should any co-owner fail to keep up his free miner's certificate, such failure shall not cause a forfeiture or act as an abandonment of the claim; but the interest of the co-owner who shall fail to keep up his free miner's certificate shall, *ipso facto*, be and become vested in his co-owners, *pro rata*, according to their former interests: Provided, nevertheless, that a shareholder in a joint stock company need not be a free miner, and, though not a free miner, shall be entitled to buy, sell, hold, or dispose of any shares therein: And provided, also, that this section shall not apply to placer mines for which a Crown grant has been issued. 1895, c. 40, s. 2.

Provided, always, that if any person or company shall acquire, by purchase or otherwise, any mine or placer claim, or interest therein, and it shall appear that some person or company through whom he or it claims title has neglected to take out or keep up a free miner's certificate, according to the provisions of this Act, such person or company so acquiring such mine or placer claim, or interest therein, may, within one month from the time when he or it shall first acquire knowledge thereof, or if knowledge already acquired within one month after this Act becomes law, pay to the Recorder of the mining division in which the claim affected is situate the fee or fees which ought to have been paid by such person or company in default as aforesaid, and thereupon the title of such person or company so acquiring the said mine or placer claim, or interest therein, shall be deemed to be and always to have been as good and effectual as if no such default had occurred; but this last proviso shall not affect litigation pending at the passage of this Act. ("The Placer Mining Act (1891) Amendment Act, 1898," s. 2.)

10. Every owner of a mine or placer claim, and every contractor for the performance of any work upon a mine or placer claim, shall pay the annual fee for a free miner's license for any person in their employment and liable for the fee, and may deduct the amount so paid on account of such person from the amount of salary or wages due or to become due to him from such employer upon production and delivery of the receipt for such tax to such person. Every such owner or contractor shall furnish to the Mining Recorder or Collector, when requested by him so to do, from time to time, a list of all persons in his employ, or indirectly employed by him, liable to pay

the said license fee; but no such statement shall bind the Recorder or Collector, or excuse him from making due enquiry to ascertain its correctness.

(2) If any person fails to pay the said license fee for his employees, or to deliver to the Recorder or Collector the list mentioned in the preceding section when required to do so, or knowingly states anything falsely in such list, such person shall be liable to a penalty not exceeding one hundred dollars, to be recovered, together with the amount of the unpaid license fees, upon summary conviction before one Justice of the Peace. 1895, c. 40, ss. 10 and 11.

11. Every free miner shall, during the continuance of his certificate but not longer, have the right to enter, locate, prospect, and mine for gold and other precious metals upon any lands in the Province of British Columbia, whether vested in the Crown or otherwise, except upon Government reservations for town sites, land occupied by any building, and any land falling within the curtilage of any dwelling house, and any orchard, and any land lawfully occupied for placer mining purposes, and also Indian reservations. 1891, c. 26, s. 10.

12. Previous to any entry being made upon lands already lawfully occupied, such free miner shall give adequate security, to the satisfaction of the Gold Commissioner, for any loss or damage which may be caused by such entry; and after such entry he shall make full compensation to the occupant or owner of such lands for any loss or damage which may be caused by reason of such entry; such compensation, in case of dispute, to be determined by a Court having jurisdiction in mining disputes, with or without a jury. 1891, c. 26, s. 11.

13. Any free miner shall be at liberty at any period of the year, while actually prospecting or engaged in mining, to kill game for his own use. 1891, c. 26, s. 13.

14. A free miner shall have all the rights and privileges granted to free miners by the "Mineral Act, 1896." 1891, c. 26, s. 14.

PART II.

SIZE AND NATURE OF PLACER CLAIMS.

15. Every free miner shall be entitled to locate and record a placer claim on each separate creek, ravine, or hill, but not more than

two claims in the same locality, only one of which shall be a creek claim. He shall be allowed to hold any number of placer claims by purchase, and every free miner may sell, mortgage, or dispose of his claim or any interest therein. 1891, c. 26, s. 15.

16. The size of placer claims shall be as follows:—

A “creek claim” shall be 100 feet long, measured in the direction of the general course of the stream, and shall extend in width from base to base of the hill or bench on each side, but when the hills or benches are less than 100 feet apart the claim shall be 100 feet square;

In “bar diggings” a claim shall be a strip of land 100 feet long at high water mark, and in width extending from high water mark into the river to its lowest water level;

In “dry diggings” a claim shall be 100 feet square;

In “bench diggings” a claim shall be 100 feet square: Provided that the Gold Commissioner shall have authority, where a bench is narrow, to extend the limits of the claim beyond the limits of the bench, but not to exceed 100 feet square;

In “hill diggings” a claim shall have a base line or frontage of 100 feet, drawn parallel to the main direction of the stream or ravine on which it fronts. Parallel lines drawn from each end of the base line, at right angles thereto, and running to the summit of the hill, shall constitute the side lines thereof. Legal posts shall be placed, 100 feet apart, on both the base line and side lines, and no claim shall extend beyond the posts so placed. 1891, c. 26, s. 16.

17. If any free miner, or party of free miners, discover a new mine and such discovery be established to the satisfaction of the Gold Commissioner, placer claims of the following sizes, in dry, bar, bench, creek, or hill diggings shall be allowed, viz.:—

To one discoverer, one claim..... 300 feet in length;

To a party of two discoverers, two claims,
amounting together to 600 “ “

To a party of three discoverers, three claims, amounting together to..... 800 feet in length;

To a party of four discoverers, four claims, amounting together to 1,000 “ “

And to each member of a party beyond four in number, a claim of the ordinary size only.

A creek discovery claim shall extend on each side of the centre of the creek as far as the summit of the hill, but not exceeding 1,000 feet. 1891, c. 26, s. 17.

18. A new stratum of auriferous earth, gravel, or cement, situated in a locality where all placer claims are abandoned, shall be deemed a new mine, although mines in the same locality shall have been previously worked; and dry diggings discovered in the vicinity of bar diggings shall be deemed a new mine, and *vice versa*. A discoverer's claim shall be considered as one ordinary claim, in respect to recording, working, and representing. 1891, c. 26, s. 18.

19. In defining the size of placer claims they shall be measured horizontally, irrespective of inequalities on the surface of the ground. 1891, c. 26, s. 19.

Locating, Recording, Re-recording, Working, and Lay-overs.

20. Every placer claim shall be as nearly as possible rectangular in form, and marked by four legal posts at the corners thereof, firmly fixed in the ground. One of such posts shall be marked as the “initial post,” and on that post shall be placed a legible notice in writing, stating the name of the claim, its length in feet and general direction, with the date of the notice and name of each locator. If any side line of any claim shall exceed 100 feet in length, legal posts shall be placed along such side line, at distances not exceeding 100 feet. 1891, c. 26, s. 20.

21. Any location made upon Sunday or any public holiday shall not for that reason be invalid, any law or statute to the contrary notwithstanding. 1891, c. 26, s. 21.

22. In case of any dispute as to the title to a placer claim, the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself, and subject further to the free miner having complied with all the terms and conditions of this Act. 1891, c. 26, s. 22.

23. Every free miner locating a placer claim shall record the same with the Mining Recorder of the district or division within which the same is situate, within three days after the location thereof, if located within ten miles of the office of the said Mining Recorder. One additional day shall be allowed for making such record for every additional ten miles or fraction thereof. Such record shall be made in a book to be kept for the purpose in the office of the said Mining Recorder, to be known as the "Record Book," in which shall be inserted the name of the claim, the name of each locator, the number of each locator's free miner's certificate, the locality of the claim, its length in feet, the period for which such record is granted, the date of location, and date of the record: Provided that a free miner shall not be entitled to a record of a claim until he shall have furnished the Mining Recorder with a written statement of the above particulars. 1891, c. 26, s. 23.

24. After the recording of a placer claim, the removal of any post by the holder thereof, or by any person acting in his behalf, made for the purpose of changing the limits of his claim, shall act as a forfeiture of the claim. 1891, c. 26, s. 24.

25. Upon the establishment of a mining division and the opening of a Mining Recorder's office therein, under the authority of this Act, such office and none other shall be the proper office for recording all placer claims within such mining division, and making all records in respect thereof. 1891, c. 26, s. 25.

26. If through ignorance any free miner shall record a placer claim in a different mining division to that in which such claim is situate, such error shall not affect his title to such claim, but he shall within fifteen days from the discovery of his error, record such claim in the mining division in which it is situate, and such new record shall bear the date of the first record, and a note shall be made thereon of the error and of the date of the rectification of the same. 1896, c. 35, s. 4.

27. A free miner having duly located a placer claim, shall be entitled to record the same for one or more years, upon payment of the fees set out in the Schedule to this Act. 1891, c. 26, s. 27.

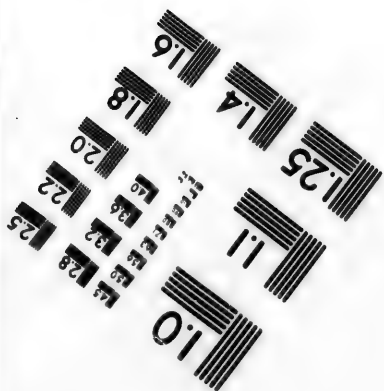
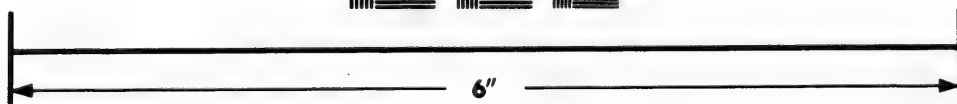
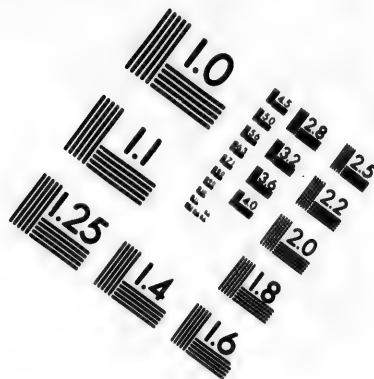
28. A free miner shall, at any time during the existence of his record or re-record, be entitled to extend the term of his interest in his placer claim for one or more years, upon payment of the fees set out in the Schedule to this Act, by re-recording such claim. Such re-record shall be made in the Record Book, and shall set out—

- (1) The name of the claim;
- (2) The name of each holder of an interest in such claim;
- (3) The number of each such holder's free miner's certificate;
- (4) The locality of the claim;
- (5) The period for which such re-record is granted;
- (6) The date of the re-record. 1891, c. 26, s. 28.

29. If a free miner shall apply for a record, and shall make such application at the Mining Recorder's office during office hours, but during his absence, and shall leave the fee required by this Act, and the particulars and information required by section 23, with the officer or other person in charge of the said office, he shall be entitled to have a record dated on the date of such application. 1891, c. 26, s. 29.

30. If a free miner shall apply for a re-record, and shall make such application at the Mining Recorder's office during office hours, but during his absence, and shall leave the fee required by this Act, and the particulars and information required by section 28, with the officer or other person in charge of the said office, he shall be entitled to have a re-record dated on the date of such application, but commencing to run from the expiration of his existing record or re-record. 1891, c. 26, s. 30.

31. A free miner, having duly located and recorded a placer claim, shall be entitled to hold the same during the existence of his record or re-record of such claim upon complying with all the terms and conditions of this Act. 1891, c. 26, s. 31.



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32. Every free miner shall have the exclusive right of entry upon his placer claim, for the miner-like working thereof, and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom: Provided that the Gold Commissioner may, upon application made to him, allow other free miners such rights of entry thereon as may be necessary for the working of their claims, upon such terms as may to him seem reasonable. 1891, c. 26, s. 32.

33. Upon any dispute as to the title to a placer claim, no irregularity made prior to the date of the then current record or re-record of such claim shall affect the title thereto, and it shall be assumed that up to the date of such record or re-record the title to such claim was perfect: Provided always, that it shall at all times be open to prove that the ground was improperly or insufficiently staked, or that the stakes have been illegally moved. 1891, c. 26, s. 33.

34. Tunnels, shafts and ditches shall be considered as belonging to the placer claim for the use of which they are constructed, and as abandoned or forfeited by the abandonment or forfeiture of the claim itself. 1891, c. 26, s. 34.

35. In tunnelling under hills, on the frontage of which angles occur, or which may be of an oblong or elliptical form, no party shall be allowed to tunnel from any of the said angles, nor from either end of such hills, so as to interfere with parties tunnelling from the main frontage. 1891, c. 26, s. 35.

36. The interest of a free miner in his placer claim shall, save as to placer mines held as real estate, be deemed to be a chattel interest, equivalent to a lease, for such period as the same may have been recorded, renewable at the end thereof by re-recording, and subject to the conditions as to forfeiture, working, representation, re-recording, and otherwise, for the time being in force with respect to placer claims. 1891, c. 26, s. 36.

37. The holder of a placer claim shall have no right to any vein or lode as defined by the "Mineral Act," within the limits of such placer claim, unless he shall have located and recorded the ground

as a mineral claim; and until he shall so locate and record such ground, the same shall be open to any free miner to locate and record as a mineral claim. 1891, c. 26, s. 37.

38. Every placer claim as defined by this Act shall be represented and *bona fide* worked by the holder thereof, or by some person on his behalf, continuously, as nearly as practicable, during working hours, and shall be deemed to be abandoned and absolutely forfeited when the same shall have remained unworked on working days by the holder thereof or some person on his behalf, for the period of seventy-two hours, except during the close season, some lay-over, or leave of absence, or during sickness, or for some other reasonable cause which shall be shown to the satisfaction of the Gold Commissioner. 1891, c. 26, s. 38.

39. Every free miner, or company of free miners, shall be entitled to a leave of absence for one year from his or their placer claim or set of claims:—

- (a) Upon proving to the Gold Commissioner that he or they has or have expended on such claim, or on any portion of the set of claims, in cash, labour, or machinery, an amount equal to one thousand dollars on each full interest, without any return of gold or other minerals in reasonable quantities from such expenditure; and
- (b) Upon the application for such leave being signed by all the holders of the claim or set of claims.

Such leave of absence shall not be deemed to relieve the holder of such claim or set of claims from carrying out the provisions of this Act respecting free miners' certificates, records and re-records of such claims; nor shall this section affect the discretionary power of the Gold Commissioner with respect to granting a leave of absence under other conditions.

(2) The provision of this section shall not apply to land or mining property held under mining leases, pursuant to Part VII. of this Act, but such leases shall in all matters be governed by the terms thereof. 1891, c. 26, s. 39, and 1895, c. 40, s. 3.

40. Every forfeiture of a placer claim shall be absolute, any rule of law or equity to the contrary notwithstanding. 1891, c. 26, s. 40.

41. No placer claim located and recorded in any district within fourteen days before, or at any time during the close season, shall be

deemed to be laid over, unless so much work shall have been *bona fide* done thereon by the holder thereof as shall, in the opinion of the Gold Commissioner, fairly entitle him to have such claim laid over. 1891, c. 26, s. 41.

42. Where the supply of water is insufficient to work hydraulic or other placer claims requiring water to enable them to be worked, such claims shall be laid over by virtue of this section during such insufficiency, but no longer, except by leave of the Gold Commissioner; but a notice of such insufficiency of water must be posted on the office of the Mining Recorder within three days from the cessation of work.

(2) The provisions of this section shall not apply to land or mining property held under mining leases pursuant to Part VII. of this Act, but such leases shall in all matters be governed by the terms thereof. 1891, c. 26, s. 42, and 1895, c. 40, s. 3.

43. Every bill of sale, conveyance, or mortgage of a placer claim, or of any fraction thereof, shall be recorded within the time prescribed for recording placer claims. 1891, c. 26, s. 43.

44. No transfer of any placer claim, or of any interest therein, shall be enforceable unless the same or some memorandum thereof shall be in writing, signed by the transferrer, or by his agent authorized in writing, and recorded in the Record of Conveyances. 1891, c. 26, s. 44.

45. The transfer of any real estate acquired under the provisions of the "Gold Mining Amendment Act, 1873," shall be in writing, signed by the transferrer or his agent authorized in writing, and attested by a subscribing witness. 1891, c. 26, s. 45.

46. Every instrument, memorandum of sale, or other writing, whether under seal or not, executed before the passing of this Act, purporting to transfer any interest in any placer claim or claims held under the authority of the Mining Laws of the Province in force at the time of such transfer, from which, by reason of its customary use, or from other satisfactory reasons, it is plainly deducible, that the intention of the maker thereof was to pass to the transferee the maker's entire interest in such claim or claims, shall, unless some reservation or exception or contrary intention appears, otherwise than by the omission of proper operative words, or of words of inheritance, or by the presence of some other informality, or of one or more such, pass, and be deemed to have passed to the transferee an estate of fee simple in the premises, or other the full estate held or possessed by the maker. 1893, c. 28, s. 4.

47. Where, by reason of the loss of the documents of title to any such claim, it is impossible to produce the same for purposes of registration, it shall be sufficient to entitle an applicant to have his title registered under the Land Registry Acts, to produce to the Registrar of Titles a copy of the record of such transfer or transfers, certified under the hand of the Mining Recorder, in whose office are the books of record in which any such transfer is recorded. 1893, c. 28, s. 5.

PART III.

Tunnels and Drains.

48. Any free miner requiring to run or construct a tunnel or drain in connection with his claim through any occupied or unoccupied lands, whether mineral or not, shall obtain a license from the Gold Commissioner for that purpose, which license shall be granted or withheld in the absolute discretion of such Gold Commissioner; and shall also give such security to the Gold Commissioner for any damage that may be caused by such tunnel or drain as such Gold Commissioner may require. Such license shall be subject to such terms and conditions as the Gold Commissioner shall think fit, and shall be recorded in the Record Book. 1891, c. 26, s. 46.

49. A tunnel or drain shall be considered as part of the placer claim, or mine held as real estate, for which the same was constructed. 1891, c. 26, s. 47.

50. Any free miner may apply to the Gold Commissioner for a grant of right of way and entry through and upon any mining ground in his district, for the purpose of constructing a drain for public drainage of mines. 1891, c. 26, s. 48.

51. The application for every such grant shall be in writing, and shall set out the name of each applicant, the nature and extent of the proposed drain, the amount of toll to be charged, the term of years for which such grant is to be made, and all other privileges sought to be acquired. The application shall be left at the Mining Recorder's office addressed to the Gold Commissioner. A notice of such application, setting out the above particulars, shall be posted on the office of the Mining Recorder and on the ground for thirty clear days before such grant shall be made. 1891, c. 26, s. 49.

52. The applicant for every such grant shall deposit with the Mining Recorder, at the time of the leaving of his application as

aforesaid, twenty-five dollars, which shall be refunded in case the application shall be refused. 1891, c. 26, s. 50.

53. Such grants shall be in writing and signed by the Gold Commissioner, and shall not be given for a longer period than twenty years, and shall give such rights of way and entry and such powers to assess, levy, and collect tolls from all persons using such drain, or benefited thereby, as the Gold Commissioner shall think fit, but not in any case to exceed the term, rights, or powers set out in the application. 1891, c. 26, s. 51.

54. The following covenants and conditions on the part of the grantee and his assigns shall be deemed to be part of every grant, whether expressed therein or not:—

- (a) That he shall construct a drain or drains of sufficient size to meet all requirements within the time therein named;
- (b) That he shall keep the same in thorough working order and repair, and free from all obstructions, and in default thereof that the Gold Commissioner may order all necessary alterations or repairs to be made by any free miners, other than the grantee or his assigns, at the cost and expense of the latter; such cost and expense to be levied by sale (subject, however, to the conditions of the grant) of all or any part of the drainage works, materials, and tolls, or any of them;
- (c) That he shall within a reasonable time, construct proper tap-drains from or into any adjacent claims, upon being requested in writing by the holders thereof so to do; and if such grantee shall fail to commence the construction of any such tap-drains for five days after receipt of such request, or after making such commencement shall for three days fail to proceed with such construction, he shall permit such holders to construct such tap-drains, in which case such holders shall only be chargeable with one-half the specified rates of toll, or such other proportion as the Gold Commissioner may direct;
- (d) That he will not, in the construction and maintenance of such drains and tap-drains, in any way injure the property of others, and that he shall make good any damage done by him. 1891, c. 26, s. 52.

55. Every such grant shall be recorded in the Record Book, and the deposited sum of twenty-five dollars shall be retained as a record-

ing fee. A rent of twenty-five dollars for each quarter of a mile and each fraction thereof shall be paid annually to the Mining Recorder by the grantee; such rent to commence from the date of the grant. 1891, c. 26, s. 53.

PART IV.

56. A free miner may, at the discretion of the Gold Commissioner, obtain a grant to a water right in any unappropriated water, for any placer mining purpose, for any term not exceeding ten years, upon such terms and conditions as such Gold Commissioner shall think fit; but no free miner shall be charged any money rental for any such water used by him for mining purposes on his own mining claim. 1894, c. 33, s. 3. But see section 154, s.-s. (c) of R. S. B. C. (1897), c. 190, which repeals this section. See also Vol. II. R. S. B. C. (1897), "erratum," which reads, "strike out caption Part IV. and section 56, reprinted by error from 1897, c. 33 s. 2, repealed by 'The Water Clauses Consolidation Act,' s. 154, s.-s. (c)."

PART V.

Mining Partnerships.

57. All mining partnerships¹ shall be governed by the provisions hereof, unless they shall have other and written articles of partnership. 1891, c. 26, s. 79.

¹ See "Partnerships Act, 1894" (Statutes 1894, c. 36, s. 84), which enacts as follows:

"This Act does not apply to mining partnerships within the purview of the 'Mineral Act, 1891,' or of the 'Placer Mining Act, 1891.'"

Quære, whether section 7 of "Companies Act, 1897" (chapter 2), applies to mining partnerships under this Act.

The section reads as follows:

"7. No company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act (8th May, 1897), for the purpose of carrying on any business within the scope of this Act that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of letters patent."

58. A mining partnership shall, unless otherwise agreed upon, be deemed to be a yearly partnership, renewable from year to year by tacit consent. 1891, c. 26, s. 80.

59. The business of such partnership shall be mining, and such other matters as pertain solely thereto. 1891, c. 26, s. 81.

60. Mining partnerships can locate and record in the partnership name a placer claim for each partner who is a free miner. Such partnership claims may be located and recorded as a set of claims, and each such claim shall be staked as an ordinary placer claim. One stake on each such claim shall be marked as an initial stake, by writing thereon the words "Initial post." It shall not be requisite to post more than one location notice on each set of claims, which notice shall be on the first initial post. 1891, c. 26, s. 82.

61. A set of claims may be recorded in one record. The name of every partner, and the number of every partner's free mining certificate, shall be on the record of every such set of claims. The partnership name shall appear on every such record, and all claims so taken up shall be the property of the partnership. 1891, c. 26, s. 83.

62. A partner in any mining partnership, or his agent authorized in writing, shall, at any meeting thereof, be entitled to vote upon any interest or fraction of an interest which he may hold therein; but the result of the votes given shall be determined by the number of the full interests voted upon, and not by the number of partners voting at such meeting. 1891, c. 26, s. 84.

63. A majority of such votes may decide when, how long, and in what manner to work the partnership claim, or set of claims, the number of men to be employed, which number shall not be less than one man to each claim, and the extent and manner of levying the assessments to defray the expenses incurred by the partnership. Such majority may also choose a foreman or manager, who shall represent the partnership and sue and be sued in the name of the partnership for assessments and otherwise; and he shall have power to bind them by his contracts. Every partner, or his duly authorized agent, shall be entitled to represent his interest in the partnership property by work and labour, so long as such work and labour be satisfactory to the foreman or manager. In the event of such partner or agent being discharged by the foreman or manager, the Court having jurisdiction in mining disputes may, if requested, summon the foreman or manager before it, and upon hearing the facts make such order as it shall deem just. 1891, c. 26, s. 85.

64. All assessments shall be payable within five days after being made. 1891, c. 26, s. 86.

65. Any partner making default in payment, after receiving a notice certifying the amount due by him, shall, if such amount be correct, be personally liable therefor to the partnership, and his interest in the partnership property may be sold by the partnership for the payment of the debt, and any further assessment which may have accrued thereon up to the day of sale, together with all costs and charges occasioned by such default; and if the proceeds of the sale be insufficient to pay off the several sums mentioned, the Court having jurisdiction in mining disputes, upon being applied to, shall issue an order directed to the sheriff to seize and sell any other personal property of the debtor. Notices of sale shall, in either of the above cases be conspicuously posted ten clear days prior to the day of sale, in the vicinity of such mining or other property, and on the Court House or Mining Recorder's office nearest thereto. But if such partner be absent from the district, such notices shall be posted as aforesaid thirty clear days before the day of sale, and a copy of such notice shall be published in some newspaper circulating in the district wherein such mining or other property is situate for the same period. Such sale shall be by public auction to the highest bidder. The purchaser shall be entitled to possession of the property sold, and to a bill of sale therefor signed by the auctioneer; such bill of sale shall confer such title upon the purchaser as the owner had. 1891, c. 26, s. 87.

66. After a notice of abandonment, in writing, shall have been served on the foreman or manager of a partnership by any member thereof, and duly recorded, such member shall not be liable for any debts or other liabilities of the partnership incurred after service and record of such notice, and no member shall be deemed to have abandoned an interest until service and record of such notice. 1891, c. 26, s. 88.

67. Any partner shall be entitled to sell, or contract for the sale of, his interest in the partnership property, but such interest shall continue liable for all the debts of the partnership. 1891, c. 26, s. 89.

68. No partner shall, after a bill of sale conveying his interest has been recorded, be liable for any indebtedness of the partnership incurred thereafter. 1891, c. 26, s. 90.

Limited Liability.

69. Any mining partnership, composed of two or more free miners, and being free from all debts in respect of the partnership

property, may limit the liability of its members, upon complying with the requirements following, that is to say:—

Upon filing with the Mining Recorder a declaratory statement containing the name of the partnership, the location and size of every partnership claim, and the particular interest of each partner; and also placing upon a conspicuous part of every such claim, or set of claims, in large letters, the name of the partnership, followed by the words "Limited Liability." 1891, c. 26, s. 91.

70. The words "Limited Liability" shall thereupon become part of the partnership name. 1891, c. 26, s. 92.

71. After such conditions shall have been complied with, no member of such partnership shall be liable for any indebtedness incurred thereafter beyond an amount proportioned to his interest in the partnership. 1891, c. 26, s. 93.

72. Every such partnership shall keep a correct account of its assets and liabilities, together with the names of the partners, and the interest held by each, and shall make out a monthly balance sheet showing the names of the creditors, and the amounts due to each, and file the same among the papers of the partnership; and such balance sheet and all the books of the partnership shall be open to the inspection of creditors at all reasonable hours. 1891, c. 26, s. 94.

73. Every partner in such partnership shall be at liberty to sell or dispose of his interest therein, or of any part thereof, to any other free miner; but such partner shall be liable for the indebtedness on the said interest in proportion to his interest in the partnership. 1891, c. 26, s. 95.

74. No member of such partnership, after a bill of sale conveying his interest has been duly recorded, or after he has served a notice of abandonment of his interest on the foreman, and left a copy thereof with the Mining Recorder, shall be liable for any indebtedness of the partnership incurred thereafter. 1891, c. 26, s. 96.

75. No such partnership shall declare any dividend until all its liabilities have been paid. 1891, c. 26, s. 97.

76. Every such partnership shall appoint a foreman or manager, who shall represent the partnership, and who shall sue and be sued in the name of the partnership; and his contracts in relation to the business of the partnership shall be deemed to be the contracts of the partnership. 1891, c. 26, s. 98.

77. No such partnership shall be liable for any other indebtedness than that contracted by its foreman or manager, or by its agent duly authorized in writing. 1891, c. 26, s. 99.

PART VI.

Bed-rock Flumes.

78. One or more free miners may apply to the Gold Commissioner for a grant of exclusive rights of way through and entry upon any mining ground in his district, for the purpose of constructing, laying and maintaining a bed-rock flume. 1891, c. 26, s. 100.

79. Every such application shall be in writing, and shall be left at the Mining Recorder's office, addressed to the Gold Commissioner, and shall state the name of the applicant and the nature and extent of the privileges sought to be acquired. Thirty days' notice of such application shall be given, by affixing the same to some conspicuous part of the ground through which the rights of way are asked, and a copy thereof upon the walls of the Court House or of the office of the Mining Recorder of the district. Prior to such application, such ground shall be marked out by legal posts, placed at intervals of one hundred and fifty feet along the proposed main line or course of the flume, with a notice of such application affixed to one of such posts. And it shall be competent for any free miner to protest before the Gold Commissioner within such thirty days against such application being granted, but not afterwards. Every application for a grant shall be accompanied by a deposit of one hundred and twenty-five dollars, to be left with the Mining Recorder, which shall be refunded if the application be refused, but not otherwise. 1891, c. 26, s. 101.

80. Every such grant shall be in writing, signed by the Gold Commissioner, and shall be for a term not exceeding five years. 1891, c. 26, s. 102.

81. The grantee shall be entitled to the following rights and privileges, that is to say:—

- (a) The right of way through and entry upon any new and unworked river, creek, gulch, or ravine, and the exclusive right to locate and work a strip of ground one hundred feet wide and two hundred feet long in the bed thereof to each grantee named in such grant:
- (b) The right of way through and entry upon any river, creek, gulch, or ravine, worked by miners for any period longer

than two years prior to such entry, and already wholly or partially abandoned, and the exclusive right to stake out and work both the unworked and abandoned portion thereof, one hundred feet in width, and one-quarter mile in length, for each grantee named in such grant:

- (c) Such right of way through and entry upon any river, creek, or ravine discovered within two years next preceding the date of his application before mentioned, and upon any portions of which any free miner is legally holding and *bona fide* working a claim, as to the Gold Commissioner may seem advisable:
- (d) The right of way through and entry upon all placer claims which are at the time of the notice of application before mentioned *bona fide* being worked by any free miner, for the purpose of cutting a channel and laying his flume therein, with such reasonable space for constructing, maintaining, and repairing the flume as may be necessary: Provided, that the owner of such last mentioned placer claim shall be entitled to take and receive the gold or other minerals found in the cut so made.
- (e) The right to all the gold or other minerals in his flumes:
- (f) No person locating new and unworked or abandoned ground within the limits of such grant, after the notice above mentioned has been given, shall have any right or title as against such grantee to the ground so located. 1891, c. 26, s. 103, and 1897, c. 29, s. 6.

82. A holder of a placer claim through which the line of the grantee's flume is to run may put in a bed-rock flume in his claim to connect with the grantee's flume, upon giving the grantee ten days' notice in writing to that effect; but he shall maintain the like grade and build his flume as thoroughly and of as strong materials as are used by such grantee. 1891, c. 26, s. 104.

83. A claim-holder constructing such flume through his claim shall keep his flume free from obstruction, and he shall be entitled to all the gold or other minerals found therein, but he shall be subject to the same regulations with regard to cleaning up the flume, repairs, and other matters in which both parties are interested, as may be adopted by such grantee; and such claim-holder shall have the right at any time before the abandonment of his claim to become a partner of the grantee, by uniting his claim and flume with the ground and flume of the grantee, and taking an interest proportionate

to that which he shall cede to the grantee; or he may abandon his claim and flume, and such abandonment shall enure to the use and benefit of the grantee. 1891, c. 26, s. 105.

84. The grantee shall lay at least one hundred feet of flume during the first year of such grant, and three hundred feet annually thereafter, until completion of the flume; but the amount of flume to be laid may be reduced at the discretion of the Gold Commissioner. 1891, c. 26, s. 106.

85. Any free miner lawfully working any claim where a bed-rock flume exists shall be entitled to tail his sluices, hydraulics, and ground-sluices into such flume, but so as not to obstruct the free working of such flume by rocks, stones, boulders, or otherwise. 1891, c. 26, s. 107.

86. The grantee shall record his grant with the Mining Recorder within three days after obtaining the same, and pay for such record the fee provided in the Schedule to this Act; and he shall also pay to the Mining Recorder annually a rent of twelve dollars and fifty cents for each quarter of a mile of right of way legally held under such grant. 1891, c. 26, s. 108.

87. The interest of the grantee in his grant, and in all flumes and fixtures connected therewith, shall be deemed to be a chattel interest equivalent to a lease for the term of such grant. 1891, c. 26, s. 109.

88. Upon the expiration of the grant for a bed-rock flume, it may be extended for any further term not exceeding five years for any one extension, at the discretion of the Gold Commissioner. 1891, c. 26, s. 110.

89. Any grant of a bed-rock flume shall be forfeited whenever the grantee shall fail to comply with the conditions thereof, or of this Act. 1891, c. 26, s. 111.

PART VII.

Leases.

90. It shall be lawful for the Gold Commissioner, with the sanction of the Lieutenant-Governor in Council, to grant a lease of any unoccupied and unreserved Crown land for placer mining purposes or for precious stone diggings for any term not exceeding twenty years, on such terms and conditions as he shall think

fit; and any free miner desiring to obtain a lease of any placer mining ground shall mark out such ground by placing a legal post at each corner, and shall post a notice on the post nearest to the placer mining claims then being worked in the immediate locality, and also on the office of the Mining Recorder, which notice shall set out—

- (1) The name of each applicant:
- (2) The locality of the ground to be acquired:
- (3) The quantity of ground:
- (4) The term for which such lease is to be applied for. 1896, c. 35, s. 5.

91. The free miner, after staking the ground and posting the notices as aforesaid, shall, within thirty days, make application in writing, addressed to the Gold Commissioner, which application shall be in duplicate, with the plan of the ground on the back, and shall leave the same at the office of the Mining Recorder, which application shall set out—

- (1) The name of each applicant:
- (2) The number of each applicant's free miner's certificate:
- (3) The locality of the ground:
- (4) The quantity of ground:
- (5) The term of the lease desired:
- (6) The rent proposed to be paid. 1896, c. 35, s. 6.

92. On making such application the free miner shall deposit with the Mining Recorder, for the use of the Gold Commissioner, a plan of the ground, in triplicate. And every person making application for a lease of mining ground for any purpose under the provisions of this Act shall deposit the sum of twenty dollars with the Gold Commissioner at the time the application is made. If the application is granted, the twenty dollars deposited to be applied towards the payment of the first year's rent, and the balance of the first year's rent shall be paid by the applicant within sixty days after the Gold Commissioner gives him notice of the execution of the lease, which notice may be sent by letter to the applicant to his address; such address to be left with the Gold Commissioner when the application for the lease is made. If the application is not granted, the twenty dollars deposited is to be returned to the applicant; but in

case the applicant fails to perform his part in accordance with his application, then the twenty dollars deposited shall be forfeited to the Government, and his application shall be void. 1896, c. 35, s. 7.

93. Application shall not be for greater than the following areas or distances:—

In creek diggings on abandoned or unworked creeks, half a mile in length:

Any other placer mining ground, eighty acres; but in no case shall any lease extend along any creek or river more than five hundred yards; creek diggings excepted:

Precious stone diggings, ten acres; but the right to mine for precious stones shall not include the right to mine for gold or other precious metals, unless the ground be held also for that purpose separately, under the provisions of this Act:

Provided, always, that nothing in this Act shall be deemed to affect the right of any holder of a lease of placer mining ground to a renewal thereof, if such holder has substantially made and performed upon the ground the labour, work, and expenditure required by such lease as a condition of renewal thereof. 1896, c. 35, s. 9.

94. A lease shall not be granted for any mining ground any portion of which is actually occupied by free miners, unless with the consent of such occupiers; and no lease shall be granted for any mining ground which is, in the opinion of the Gold Commissioner, available for agricultural purposes. 1894, c. 33, s. 6.

95. The Gold Commissioner may, with the sanction of the Lieutenant-Governor in Council, grant or refuse any application for a lease of placer mining ground, or modify the terms and conditions of such application as he shall think fit. 1896, c. 35, s. 10.

96. Every application for a lease of placer mining ground, together with the plan of the ground and the Gold Commissioner's report thereon, shall be forwarded by such Gold Commissioner to the Lieutenant-Governor in Council, and no lease shall be granted on any such application without his sanction. 1896, c. 35, s. 11.

97. Every lease of mining ground shall be in writing signed by the Gold Commissioner and the lessee, and shall be in duplicate or triplicate, as the case may require, and one copy of every such lease shall, as soon as possible after it is issued, be transmitted by mail

by the Gold Commissioner issuing the same, to be filed in the office of the Mining Recorder in the mining division of the district in which the mining ground leased is situated. 1896, c. 35, s. 12.

98. Every lease shall provide for securing to the public reasonable rights of way and water, and shall contain a covenant by the lessee to mine the ground in a miner-like manner, and shall contain such covenants for the continuous working of such ground as the Gold Commissioner shall think reasonable, and shall reserve the right to free miners to enter on such ground and mine for veins or lodes, as defined by the "Mineral Act, 1891," c. 26, s. 121.

99. On the non-performance or non-observance of any covenant or condition in any lease, such lease shall be declared forfeited by the Gold Commissioner, subject to the approval of the Minister of Mines, unless good cause be shown to the contrary. After any such declaration of forfeiture, the mining ground shall be open for location by any free miner. No lease, whether made before or after the passage of this Act, shall hereafter be declared forfeited, except in accordance with this section. 1896, c. 35, s. 13.

100. Leases shall be granted for placer mining only, and shall not be assigned or sub-let without the written consent of the Gold Commissioner. 1891, c. 26, s. 123.

101. When any placer mining ground is held under lease, and such mining ground shall have been efficiently worked, as required by the conditions of the lease, to the satisfaction of the Gold Commissioner, and if at the expiration of the lease a portion of said mining ground remains still to be worked, the lessee may obtain an extension of the lease, upon the same conditions as the original lease, for such reasonable time as will enable him to work out such portion of said mining ground as still remains unworked, and the Gold Commissioner may, with the sanction of the Lieutenant-Governor in Council, grant such extension by memorandum endorsed on the lease: Provided, that whenever the mining ground so held under lease has been forfeited, abandoned, or worked out, and when the ditch or flume constructed for conveying water has a carrying capacity of not less than five hundred inches of water, and shall have cost not less than five thousand dollars, such ditch or flume shall remain the property of the owner thereof. 1897, c. 29, s. 3.

102. Any free miner, or two or more free miners, holding adjoining leases as creek claims, or leases of any other placer mining grounds, may consolidate as many as ten leases, by filing with the

Mining Recorder a declaratory statement containing the name of the company or partnership which is to hold the consolidated lease, the location and size of each lease; and such statement shall be signed by the holder or holders of the leases to be consolidated. After filing such declaratory statement such free miner, or free miners, shall be allowed in each and every year to perform, on any one or more of such leases, all the work that is necessary to be performed to hold all such leases. ("The Placer Mining Act (1891) Amendment Act, 1898," s. 3.)

103. It shall be lawful for the Gold Commissioner with the sanction of the Lieutenant-Governor in Council, to grant a lease for any term, not exceeding twenty years, of the bed of any river below low watermark for dredging purposes, for a distance not exceeding five miles, upon such terms as he shall think fit: Provided, always, that every such lease shall reserve the right to every free miner or mining company to run tailings into such river at any point thereon, also to mine two feet below the surface of the water at low water mark, by putting in wing-dams, whether such free miner shall locate before or after the date of such lease; and it shall be lawful for the holder or holders of any lease or leases, whether granted before or after the passing of this Act, engaged in dredging for gold in any such river, at the time when they may be engaged in dredging to cut into any bar, bench, or old channel on any of the banks of such river on which they hold leases, or mine in any bench or bank thereof during high or low water, provided the same ground is not leased under the "Placer Mining Act, 1891," or this or any other Act, or is not at such time being worked by free miners, the right being always reserved to free miners to construct wing-dams as far as may be desired into any of such bars, banks or benches for the purpose of conducting mining operations, either by sluice or rocker, and parties holding such dredging leases shall not in any manner interfere with any free miner or stop him from working any part of said river or benches, otherwise than by dredging, of which the holders of such leases shall have the full right. 1895, c. 40, s. 8.

Dredgers—Protection.

104. (1) It shall not be lawful for any free miner to construct wing-dams within one thousand feet of any dredger while working, nor to obstruct any dredger in any manner. 1895, c. 40, s. 9.

PART VIII.

Mining Recorders—Appointment, Duties, Powers.

105. The Lieutenant-Governor in Council may appoint any person to be a Mining Recorder in and for any part of the Province. 1891, c. 26, s. 127.

106. Where mineral land is discovered in a part of the Province so situate that the provisions of this Act as to free miners' certificates and records of mining property cannot be justly applied or enforced, by reason of there being no Gold Commissioner or Mining Recorder in the locality, it shall be lawful for the miners of such locality to hold meetings at such times and places as may be agreed upon, and at such meetings, by a two-thirds vote, to appoint one of their number to issue free miners' certificates and to enter records of mining property; and such certificates and records shall be valid, notwithstanding any informality therein: Provided that all records so made, and all fees for the same in accordance with the Schedule to this Act, and a list of all free miners' certificates issued, and the date and term thereof, and the fees for the same, be forwarded to the nearest Gold Commissioner or Mining Recorder as soon thereafter as practicable. 1891, c. 26, s. 128.

107. Every Mining Recorder shall issue free miners' certificates and "substituted certificates" to all persons and companies entitled thereto. 1891, c. 26, s. 129.

108. Such free miners' certificates shall be taken from a printed book of forms, with duplicate counterfoils, one of which counterfoils shall be filed in the office of the Mining Recorder. 1891, c. 26, s. 130.

109. Every Mining Recorder shall keep the following books, to be used for placer mining entries:—

- (a) A book to be known as the "Record Book":
- (b) A book to be known as the "Record of Abandonments":
- (c) A book to be known as the "Record of Affidavits":
- (d) A book to be known as the "Record of Conveyances":
- (e) A book to be known as the "Record of Water Grants." 1891, c. 26, s. 131.

See the "Water Clauses Consolidation Act, 1897," R. S. B. C., (1897) c. 90, printed in Appendix I., No. 26.

The legislation as to water alters the common law rules, and, in its construction and interpretation, the principles laid down in Heydon's Case (1584), 3 Co. Rep. 7a, may be usefully applied. There the Judges unanimously resolved that in order to construe a statute truly four things are to be considered: First, what the common law was before; second, what the mischief was for which the common law had not provided; third, the remedy provided by the statute; fourth, the true reason of the remedy, and that the Courts should construe statutes so as to redress the mischief and extend the remedy. These sound principles of construction were acted on by Baron Parke in *Lyde v. Barnard* (1836), 1 M. & W. 113; by Lord Selborne, L.C., in *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354, 362; and by Lord Halsbury, L.C., in *Bruce v. Ailesbury* (1892), A. C. 356, 361.

In the *Columbia River Lumber Company v. Yuill*, (1892) 2 B. C. R. 237, Plaintiffs were entitled, as riparian proprietors, to the use of the natural flow of the water of a stream, Quartz Creek, running through timber lands leased by them from the Dominion Government. The lands so leased were part of the lands in the railway belt granted to the Dominion by the Province of British Columbia by 43 Vict. (B. C.) c. 2, in aid of the construction of the C. P. R.

Defendants, as free miners licensed by the Provincial Government, obtained from it a grant of the right to use for mining purposes the water of a stream running into Quartz Creek above the plaintiffs' sawmill, by record under the Placer Mining (B. C.) Act, 1891, ss. 56 and 57.

Defendants so used this water as to foul Quartz Creek and stop the plaintiffs' mill.

Held, by Drake, J.:

1. No person, unless by grant or prescription, is entitled to deprive another of the beneficial use of water which would naturally descend to him.

2. A right granted by a statute which does not in express terms derogate from the rights of others, cannot be held to have done so by implication.

3. A grant of water privileges under the Provincial Mining Acts does not sanction the user of the water to the detriment of the rights of others, however acquired, to the same water at another part of the stream.

4. The Dominion Government, under 43 Vict. (B. C.) c. 2, were in possession of the lands as trustees to administer same, and it was competent to them to grant a lease to the plaintiffs carrying the ordinary rights to the water of a riparian proprietor.

110. Upon the application of or on behalf of any free miner, and upon receipt of all the particulars required by section 23 of this Act, the Mining Recorder shall record any placer claim, by entering all the particulars required by said section in the Record Book, which entry shall be, as near as convenient, in the form B in the Schedule to this Act. Upon the application of or on behalf of any free miner,

and upon receipt of all the particulars required by section 28 of this Act, the Mining Recorder shall re-record any placer claim, by entering all the particulars required by said section in the Record Book, which entry shall be, as near as convenient, in the form C in the Schedule to this Act. The Mining Recorder shall not make any such record until he has received all the particulars required by section 28, and any record made in violation of this section shall be absolutely void. 1891, c. 26, s. 132.

111. The Mining Recorder shall record every lay-over, leave of absence, license permit, and other privilege granted and forfeiture declared by the Gold Commissioner in the Record Book. 1891, c. 26, s. 133.

112. Upon the receipt of a notice of abandonment, the Mining Recorder shall record the same in the Record of Abandonments, and file such notice, and write across the record of the claim affected by such notice, in the Record Book, the word "Abandoned," and the date of the receipt by him of the notice. If only an interest in a placer claim is abandoned, and not the entire claim, the memorandum in the record shall show which interest is abandoned. 1891, c. 26, s. 135.

113. The Mining Recorder shall record, by copying out verbatim, all affidavits and declaratory statements brought to him in connection with his office, in the Record of Affidavits. 1891, c. 26, s. 136.

114. The Mining Recorder shall record, by copying out verbatim, in the Record of Conveyances, all conveyances, mortgages, bills of sale, contracts for sale, and other documents of title, including powers of attorney, or other authorities, to execute all or any of the above description of documents when brought to him for that purpose. 1891, c. 26, s. 137.

115. The Mining Recorder shall record all other documents relating to mining property which may be brought to him for record, and shall file all such documents which may be brought to him to be filed. 1891, c. 26, s. 138.

116. Every entry made in any of the Mining Recorder's books shall show the date on which such order was made. 1891, c. 26, s. 139.

117. All books of record shall, during office hours, be open to public inspection free of charge, and documents filed shall be open to

public inspection upon payment of the fee set out in the Schedule to this Act. 1891, c. 26, s. 140.

118. Every copy of, or extract from, any entry in any of the said books, or of any document filed in the Mining Recorder's office, certified to be a true copy or extract by the Mining Recorder, shall be received in any Court as evidence of the matters therein contained. 1891, c. 26, s. 141.

119. Before issuing any free miner's certificate, or substituted certificate, or making any entry in any book of record, or filing any document, or making any copy or extract therefrom, the Mining Recorder shall collect the fees payable in respect thereof, as set out in the Schedule to this Act. 1891, c. 26, s. 142.

120. The Mining Recorder shall receive all applications and other documents addressed to or intended for the Gold Commissioner, and forward the same to the Gold Commissioner. 1891, c. 26, s. 143.

121. The Mining Recorder shall receive all deposits of money directed to be made by this Act, and apply the same as directed by this Act. 1891, c. 26, s. 144.

122. The Mining Recorder shall collect all rents collectable under the conditions of any lease or other documents granted under the provisions of this Act. 1891, c. 26, s. 145.

123. The Mining Recorder shall forward to the Provincial Treasury all fees, rents, fines, penalties, and other moneys collected or obtained by him in accordance with the provisions of this Act. 1891, c. 26, s. 146.

124. It shall be lawful for the Lieutenant-Governor in Council to divide and subdivide any district into mining divisions, and to establish in each or either mining division a Mining Recorder's office. 1891, c. 26, s. 147.

125. Upon the establishment of a mining division, and the opening of a Mining Recorder's office therein, under the authority of the last preceding section—

- (a) Such office and none other, shall be the proper office for recording all placer claims, records, certificates, documents, or other instruments affecting claims, placer mines held as real estate, or placer mining property, situate within such

mining division, and whenever by this Act, or any Act amending the same, anything is required to be done at or in the office of the Gold Commissioner or Mining Recorder of the district, it shall, if the same affects or concerns any claim, placer mine held as real estate, or placer mining property, situate within a mining division, be done at or in the office of the Mining Recorder of the mining division wherein such claim or mine, or other mining property, is situate:

- (b) Upon the district or division of any Mining Recorder being divided or subdivided into mining divisions, it shall be the duty of such Mining Recorder to make, or cause to be made, a transcript of all the entries in all the books mentioned in section 109 of this Act, affecting claims, placer mines held as real estate, or placer mining property, situate in each newly created mining division, and to forward the same to the Mining Recorder of such mining division, and such transcript shall be kept in such office as part of the records of such office, and all transcripts of such records, certificates, documents, or other instruments, shall, *prima facie*, be deemed to be true copies of the several records, certificates, documents, or other instruments of which they purport to be transcripts; and such transcripts or copies thereof, when certified by the Mining Recorder of the mining division in whose office they are kept, shall be admissible in evidence in all Courts of Judicature in the Province. 1891, c. 26, s. 148.

126. When there shall be no Mining Recorder for a district or division, the duties of the Mining Recorder shall devolve upon the Gold Commissioner, and it shall at all times be lawful for the Gold Commissioner to perform the duties of the Mining Recorder, and the Gold Commissioner shall have all the powers of a Mining Recorder. 1891, c. 26, s. 149.

127. The Mining Recorder's office shall be open upon all days, excepting public holidays, from 10 a.m. to 4 p.m., and such times shall be deemed the office hours of such office. 1891, c. 26, s. 150.

PART IX.

Gold Commissioner's Powers.

128. It shall be lawful for the Gold Commissioner to perform the following acts in accordance with the provisions of this Act:—

- (a) He may lay over any or all claims, and may grant to any holder of a claim leave of absence for such period and reasons as he may think proper:
- (b) He may prescribe the number of miners who shall be required to work in prospecting a set of claims until gold in paying quantities is found:
- (c) For the more convenient working of back claims on benches or slopes, the Gold Commissioner may permit the owners thereof to drive a tunnel through the claims fronting on any creek, ravine or water-course, upon such terms as shall seem expedient: Provided that in tunnelling under hills, on the frontage of which angles occur, or which may be of an oblong or elliptical form, no party shall be allowed to tunnel from any of the said angles, nor from either end of such hills, so as to interfere with parties tunnelling from the main frontage:
- (d) He may mark out a space of ground for deposits of leavings and deads from any tunnel, claim, or mining ground, upon such terms as he may think just:
- (e) He may extend the limits of a claim in "bench diggings" beyond the limits of the bench, but not to exceed 100 feet square.
- (f) He may, in case of disputed boundaries or measurements, employ a surveyor to mark and define the same, and cause the reasonable expense thereof to be paid by either or both of the parties interested therein:
- (g) He may permit or order mining posts to be moved:
- (h) He may summarily order any mining works to be so carried on as not to interfere with or endanger the safety of the public, any public work or highway, or any mining property, mineral claim, placer claim, bed-rock drain, or bed-rock flume; and any abandoned works may by his order be either filled up, or guarded to his satisfaction, at the cost of the party who may have constructed the same, or, in his absence, upon such terms as he shall think fit:
- (i) He may, upon application made to him, allow a free miner such right of entry upon any adjacent claim as may be necessary for the working of his claim, and upon such terms as may to him seem reasonable:

- (j) He may grant rights of way for the purpose of constructing drains or tunnels, and may exercise such powers as are specified in Part III. of this Act :
- (k) He may grant rights of way for the purpose of constructing a bed-rock flume, and may extend the grant at its expiration, in accordance with Part VI. of this Act:
- (l) He may grant leases of placer mining ground, and he may grant renewals of such leases, and exercise all such powers as are specified in Part VII. of this Act. 1891, c. 26, s. 151 & 1897, c. 29, ss. 4 & 6.

129. Notwithstanding anything contained in the "Gold Mining Amendment Act, 1873," or in any Crown grant issued under the said Act, or under this or any other Act, it shall be lawful for the Gold Commissioner, in his discretion, and with or without any terms or conditions, to allow to the owners of placer claims all such rights or privileges in and over mineral or other claims held as real estate as may be allowed in and over claims not so held; and owners of claims held as real estate shall be entitled to the same rights and privileges as owners of claims not so held. 1891, c. 26, s. 152.

130. The Gold Commissioner shall have power to do all things necessary or expedient for the carrying out of the provisions of this Act. 1891, c. 26, s. 153.

Administration.

131. The Gold Commissioner shall take possession of the mining property of any deceased free miner, and may cause such mining property to be duly worked, or dispense therewith at his option. 1891, c. 26, s. 154.

132. The Gold Commissioner, or any person authorized by him, shall take charge of all the property of any deceased free miner until the issue of letters of administration or probate of the will, if any: Provided, however, that where any free miner shall die intestate, and the value of the personal estate of such deceased free miner is less than three hundred dollars, it shall not be necessary for the Gold Commissioner to obtain from any Court letters of administration, but in such case the Gold Commissioner may administer and wind up the personal estate of the deceased, and do all things necessary and pro-

per therefor, and act in all respects as if letters of administration to the personal estate of such deceased free miner had been granted to such Gold Commissioner, and the Gold Commissioner shall produce and pass his accounts, in each estate of which he shall undertake the administration, before a Judge of the County Court of the district. 1891, c. 26, s. 155.

PART X.

COUNTY COURTS.

Jurisdiction, Procedure, Forms, and Costs.

133. In addition to the jurisdiction and powers given to County Courts by the "County Courts Act," and other Acts, every County Court shall have and exercise, within the limits of its district, all the jurisdiction and powers of a Court of Law and Equity:—

- (1) In all personal actions, where the debt or damages claimed arise directly out of the business of mining (other than coal mining), or from the exercise of or interference with any right, power, or privilege given, or claimed to be given, by this Act or any other Act relating to mining (other than coal mining):
- (2) In all actions between employers and employees, where the employment is directly connected with the business of mining (other than coal mining):
- (3) In all actions for supplies to persons engaged in mining, where such supplies were bought, contracted for, or supplied, or were alleged to have been bought, contracted for, or supplied, for mining purposes, or for consumption by persons engaged in mining or prospecting:
- (4) In all actions of trespass on or in respect of mineral claims or other mining property, or upon or in respect of lands entered or trespassed on, or claimed to have been entered or trespassed on, in searching for, mining, or working minerals (other than coal), or for any other purpose directly connected with the business of mining (other than coal mining), or in the exercise of any power or privilege given, or claimed to be given, by this Act, or any other Act relating to mining (other than coal mining):

- (5) In all actions of ejectment from mineral claims or other mining property, or from lands entered, or claimed to have been entered, in searching for, mining, or working minerals (other than coal), or for any purpose directly connected with the business of mining, or entered, or claimed to have been entered, under some power, right or authority given or obtained under the provisions of this Act, or any other Act relating to mining (other than coal mining):
- (6) In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge or lien shall be on mineral claims, mines, or other mining property:
- (7) In all suits for specific performance of, or for re-forming, or delivering up, or cancelling, any agreement for sale, purchase, or lease of any mineral claim, mine, or other mining property:
- (8) In all suits for the dissolution or winding up of any mining partnership, whether registered or not, under the provisions of this Act:
- (9) In all proceedings for orders in the nature of injunctions, where the same are requisite for the granting of relief in any matter in which jurisdiction is given to the County Court by this Act. 1891, c. 26, s. 156, & 1897, c. 29, s. 6.

134. The jurisdiction given to County Courts by this Act shall be known as the "mining jurisdiction" of the County Court, and the words "mining jurisdiction" shall be written or printed on all summonses, writs, and other process, and all other documents, in every action or cause brought under the mining jurisdiction of the County Court. 1891, c. 26, s. 157.

135. County Courts and County Court Judges, registrars, sheriffs, and other officers, shall have the same duties, powers, privileges, and authorities in all actions and suits, and other proceedings brought under the mining jurisdiction of the County Court, as they now have, or at any time hereafter may have, in actions and suits and other proceedings brought under the ordinary jurisdiction of the County Court, and the provisions of all Acts for the time being in force regulating the duties and powers of County Courts and County Court Judges, registrars, sheriffs, and other officers, and regulating the practice and procedure in County Courts, and all Rules and

Orders for the time being applicable to the ordinary jurisdiction of the County Court, shall, so far as practicable and not inconsistent with this Act, apply to the mining jurisdiction of the County Court. 1891, c. 26, s. 158.

136. Where disputes arise concerning mining property, portions whereof are situated in adjoining or different districts, the County Court of either of such districts before which the dispute is first brought shall determine it. 1891, c. 26, s. 159.

137. The hearing of any summons, plaint, or other process in any County Court shall not be deferred beyond the shortest reasonable time necessary in the interests of all parties concerned, and it shall be lawful for the Registrar to make summonses or other proceedings returnable forthwith, or at any other time. 1891, c. 26, s. 160.

138. In all mining actions or suits the Court may decide the question at issue upon the ground in dispute, and such decision shall be entered as in ordinary cases, and have the same virtue and effect as if rendered in Court. 1891, c. 26, s. 161.

139. In any mining cause or suit, either party may require that the issues of fact shall be tried by a jury, and the Judge may, before delivering judgment in any action, suit or other proceeding, direct all or any issues of fact to be found by a jury. 1891, c. 26, s. 162.

140. In all actions, suits, and other proceedings within the mining jurisdiction of the County Court, the Judge may order that costs be taxed on the higher or lower scale allowed by the County Court Rules; or if he shall consider the case of sufficient importance, he may order that costs be taxed as in the Supreme Court, and the costs so ordered shall be the costs recoverable in such action, suit, or other proceeding. 1891, c. 26, s. 163.

141. Every County Court having jurisdiction in mining disputes shall, with reference to real estate held under the "Gold Mining Amendment Act, 1873," or under this Act, and notwithstanding any law to the contrary, have the same powers and authorities to decide all matters or disputes arising between the owners thereof, or between the owners thereof and any third person, or between mining joint-stock companies, or between shareholders therein, or between them and the company, in the same way and as fully as it might do concerning claims not being real estate; and actions, suits and other

proceedings relating to such matters or disputes shall be brought and had in the same manner as actions, suits, or proceedings relating to mining claims not being real estate. 1891, c. 26, s. 164.

142. Any County Court Judge having jurisdiction in mining causes, may direct the issuing of writs of *capias ad respondendum ne exeat regno*, and special orders for the arrest and detention of judgment debtors in all cases in which by law he has jurisdiction over the subject-matter of the suit, but under and subject to such conditions as the Judge of the Supreme Court might usually require in applications of a similar nature. 1891, c. 26, s. 165.

143. The jurisdiction given to the County Court by this Act shall not in any manner interfere with or lessen the jurisdiction of the Supreme Court. 1891, c. 26, s. 166.

PART XI.

Penal and Miscellaneous.

144. Any person wilfully acting in contravention of this Act, or refusing to obey any lawful order of the Gold Commissioner or of any Judge presiding in a Court having jurisdiction in mining disputes, shall on conviction thereof in a summary way before any two Justices of the Peace or a Stipendiary Magistrate, or before any Judge of a Court having jurisdiction in mining disputes, be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment, with or without hard labour, for any term not exceeding three months. 1891, c. 26, s. 167.

145. All fines and penalties imposed or payable under this Act may be recovered by distress and sale of any mining or other personal property of the offender, and in default by imprisonment, with or without hard labour, for any term not exceeding three months. 1891, c. 26, s. 168.

146. All fees, rents, fines, penalties and other moneys collected under this Act shall be paid into the Provincial Treasury. 1891, c. 26, s. 169.

147. Nothing herein contained shall, save where such intention is expressly stated, be so construed as to affect prejudicially any mining rights and interests acquired prior to the passing of this Act; and all mining rights and privileges heretofore and hereunder ac-

quired shall, without the same being expressly stated, be deemed to be taken and held subject to the rights of Her Majesty, Her heirs and successors, and to the public rights of way and water. 1891, c. 26, s. 170.

148. Every free miner, on application to the Mining Recorder, shall be entitled to a printed copy of this Act. 1891, c. 26, s. 171.

149. Affidavits and declarations made under the provisions of this Act shall be made before some Judge or Registrar of a Court of Record, or before some Gold Commissioner, Mining Recorder, Stipendiary Magistrate, Justice of the Peace, Notary Public, or Commissioner for taking Affidavits. 1891, c. 26, s. 172.

Rules and Regulations.

150. The Lieutenant-Governor in Council may make such orders as are deemed necessary from time to time to carry out the provisions of this Act according to their true intent, or to meet the cases which may arise and for which no provision is made in this Act, or when the provision which is made is ambiguous or doubtful; and may also make regulations for relieving against forfeitures arising under section 9 of this Act; and may further make and declare any regulations which are considered necessary to give the provisions in this clause contained full effect; and from time to time alter or revoke any order or orders or any regulations made in respect of the said provisions, and make others in their stead; and further impose penalties not exceeding two hundred dollars, or not exceeding three months' imprisonment for violation of any regulations under this Act; and further provide that any statement or returns required to be made by said regulations shall be verified on oath. Every order or regulation made by virtue of the provisions of this section shall have force and effect only after the same has been published for two successive weeks in the British Columbia Gazette; and such orders or regulations shall be laid before the Legislative Assembly within the first fifteen days of the session next after the date thereof. 1895, c. 40, s. 13.

Taxation of Mines and Moneys Invested Therein.

151. ¹Notwithstanding any thing contained in this Act, mines and moneys invested therein shall not be exempt from taxation, but shall bear such rate as may be imposed by any law in force in the Province. 1895, c. 40, s. 12.

152. There shall be levied and collected from the owner or occupier of every mineral or placer claim of which a Crown grant has issued, including Crown grants issued under authority of an Act made and passed in the 36th year of Her Majesty's reign, intituled "An Act to amend the 'Gold Mining Ordinance, 1867,' and the 'Gold Mining Amendment Act, 1872,'" an annual tax of twenty-five cents for every acre and fractional part of an acre of land conveyed by the grant, payable on the 30th day of June in each year. Such tax shall form a charge upon the claim. The assessor appointed under or by virtue of any existing Assessment Act, or any collector appointed under "The Provincial Revenue Tax Act," is hereby authorized as to the mineral or placer claims situate within the district for which he is appointed, to collect and receive the tax. In the event of the tax not being paid to the assessor or collector, the Gold Commissioner may, in his discretion, cause the claim upon which the tax is charged to be offered for sale by public auction, of which sixty days' notice shall be posted upon the principal court house of the district in which the claim is situate, and in one newspaper, if any, published in such district, and may sell such claim, receive the purchase money and execute a conveyance thereof to the purchaser. The purchase money shall be applied in payment of the expenses of advertising and the payment of the tax, and any surplus shall be paid into the Treasury in trust for the owner of the claim. In the event of there being no purchaser, or if the price offered shall not be sufficient to pay the tax and expenses of advertising, the land shall absolutely revert to the Province, and the Crown grant thereof shall be deemed void. The assessor or collector may, before offering the claim for sale, sue the owner or occupier for the tax, in a summary manner, before any justice of the peace, who may adjudge the same to be paid; and in default of payment, the amount due, together with costs, may be recovered by distress of the goods and chattels of the person against whom the tax may be recovered; Provided that if the owner of any such mineral or placer claim shall establish, to the satisfaction of the Gold Commissioner, Mining Recorder, or assessor and collector of the district in which the claim lies, that the sum of two hundred dollars has been expended thereon in labour or improvements in any one year, then the tax shall not be levied in respect of such claim for such year. 1896, c. 34, s. 163.

153. Where a claim has been recorded under any name, and the owner or his agent is desirous of changing the same, the Recorder of said mining division may, upon application being made by such owner or agent, and upon payment of a fee of twenty-five dollars,

amend the record accordingly; Provided, however, that such change of name shall not in any way affect or prejudice any proceedings or execution against the owner of the said claim. 1896, c. 34, s. 164.

154. Whenever, through the acts or defaults of any person other than the recorded owner of a mineral claim or his agent by him duly authorized, the evidence of the location or record on the ground, or the situation of a mineral claim, has been destroyed, lost, or effaced, or is difficult of ascertainment, nevertheless effect shall be given to same as far as possible, and the Court shall have power to make all necessary inquiries, directions and references in the premises for the purpose of carrying out the object hereof, and vesting title in the first *bona fide* acquirer of the claim. 1896, c. 34, s. 165.

AN ACT TO AMEND "THE PLACER MINING ACT."
R. S., CHAPTER 136.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. This Act may be cited as "The Placer Mining Act (1891) Amendment Act, 1898."

2. Section 9 of the said Act is hereby amended by the addition thereto of the following proviso: (See section 9 of principal Act.)

3. Section 102 of the said Act is hereby repealed and the following substituted in lieu thereof: (See section 102 of principal Act.)

4. Any free miner, or two or more free miners, holding adjoining leases of placer mining ground, may consolidate his or their holdings into one holding, not to exceed six hundred and forty acres, by filing with the Mining Recorder a declaratory statement containing the name of the company or partnership which is to hold the consolidated lease, the location and size of each lease, and the particular interest of each free miner in the leases to be consolidated, and such statement shall be signed by the holder or holders of the leases to be

consolidated. After filing such declaratory statement, such free miner, or free miners, shall be allowed in each and every year to perform on any one or more of such leases all the work that is necessary to be performed to hold all such leases, and any water grant that has been made for the working of any one of such leases shall, after the consolidation of such leases, be appurtenant to and may be used on any one of such consolidated leases; and provided further, that when two or more leases have been consolidated into one holding, as provided in this section, and such leases contain a provision that a certain amount of money shall be expended in working each of such leases each year in order to hold it, the holder or holders of such leases may, in lieu of the required expenditure in work on such leases in each year, pay to the Mining Recorder of the mining division in which such leases are situate, a sum equal to twenty-five per cent. of the aggregate amount required to be so expended in work on the consolidated leases, and receive from such Recorder and record a receipt for such payment; and payment and record thereof in any year shall relieve the person making it from the necessity of doing any work during the year in and for which and upon the lease in respect of which such payment is recorded.

REVISED STATUTES OF BRITISH COLUMBIA (1897),
CHAPTER 134.

An Act for securing the safety and good health of workmen engaged in or about the metalliferous mines in the Province of British Columbia by the appointment of an inspector of metalliferous mines.

Whereas, it is expedient to secure the safety and good health of the men engaged in or about the mines (otherwise than coal mines) in this Province;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. This Act shall be cited as the "Inspection of Metalliferous Mines Act, 1897." 1897, c. 27, s. 1 (assented to May, 1897).¹

¹ This Act is an adaptation of the Metalliferous Mines Regulation Act, 1872, 35 & 36 Vict. (Imp.) c. 77, as amended by subsequent English legislation.

2. The Lieutenant-Governor in Council may appoint an inspector of metalliferous mines, or mines of whatever description other than a mine to which the "Coal Mines Regulation Act," and amending Acts applies; he shall be a man of at least seven (7) years' practical experience in mining, whose duties shall be as hereinafter specified, and he shall receive such salary and allowance as shall be determined by the Lieutenant-Governor in Council; and before entering upon the discharge of his duties, he shall take and subscribe to an oath that he will discharge such duties faithfully. *Ib.* s. 2.

3. The inspector of mines shall not act as manager, or agent, or lessee for any mining, or other corporation, during the term of his office; he shall give his whole time and attention to the duties of the office to which he has been appointed; he shall not make a report of any mine or mining property for any person or persons interested in such mine or mining property, with the intent to promote or aid in the sale or other conveyance thereof; and this officer violating this provision shall, upon summary conviction thereof, forfeit and pay a fine of not less than \$100 nor more than \$1,000. *Ib.* s. 3.

4. The Minister of Mines shall on receipt of reliable information relating to the health and safety of the workmen employed in any metalliferous mine in the Province of British Columbia, or wherever he deems such inspection necessary, instruct the inspector to examine and report to him the condition of such mine. The mine owner, agent, manager or lessee shall have the right to appeal to the Minister of Mines on any difference that may arise between such parties and the inspector. On receipt of notice of any serious accident in any mine, the Minister of Mines shall instruct the inspector to enquire into the cause of such accident. *Ib.* s. 4.

5. The Minister of Mines shall instruct the inspector to examine and report to him the condition of the hoisting machinery, engines, boilers, whines, cages, cars, buckets, ropes, and cables in use in any of the metalliferous mines in operation in the Province of British Columbia; the appliances used for the extinguishing of fires, the manner and method of working and timbering the shafts, drifts, inclines, stopes, winzes, tunnels, and up-raises through which persons pass while engaged in their daily labours, of exits from the mine, and how the mine is ventilated, together with the sanitary condition of the same, and also how and where all explosives and inflammable oils and supplies are stored, also the system of signals used in the mines. The inspector shall not give notice to any owner, agent, manager, or lessee of the time when such inspection shall be made. *Ib.* s. 5.

6. Every owner, agent, manager, or lessee of any metalliferous mine in this Province shall admit the inspector to such mine on the exhibition of his certificate of appointment, for the purpose of making the examination and inspection provided for in this Act, whenever the mine is in act of operation, but said inspector shall not unnecessarily obstruct the working of said mine. *Ib.* s. 6.

If the owner, agent, manager, or lessee refuses to admit the inspector to such mine, or to render him necessary assistance for inspection, such owner, agent, manager, or lessee shall be guilty of an offence against this Act, and shall be liable, upon summary conviction, to a fine of not less than \$10 nor more than \$500 for each and every such refusal or neglect. *Ib.* s. 6.

7. If the inspector shall reveal any information in regard to ore bodies, chutes, or bodies of ore, or location, course, or character of under-ground workings, or give any information or opinion respecting any mine, obtained or formed by him in making such inspection,

upon summary conviction thereof, the said inspector shall be removed from office and fined in a sum of not less than \$100 nor more than \$1,000. *Ib.* s. 7.

8. The inspector shall exercise a sound discretion in the advancement of the objects of this Act, and in the enforcement of the regulations made hereunder; and if he shall find any matter, thing, or practice in or connected with any metalliferous mines to be dangerous or defective, so as to, in his opinion, threaten or tend to the bodily injury of any person, the inspector shall give notice in writing thereof to the owner, stating in such notice the particulars in which he considers such mine, part thereof, or practice, to be dangerous or defective, he shall order the same to be remedied. *Ib.* s. 8.

9. In case the owner, agent, manager, or lessee, after a written notice being duly given, does not conform to or disregard any lawful order of the inspector made hereunder, or disobeys any regulation made hereunder, any Court of competent jurisdiction may, on application or information of the Minister of Mines by civil action, enjoin or restrain with costs the owner, agent, manager, or lessee from working the same until it is made to conform to the provisions of this Act; and such remedy shall be cumulative and shall not affect any other proceeding against such owner, agent, manager, or lessee, authorized by law for the matter complained of in such action. *Ib.* s. 9.

10. Any owner, agent, manager, or lessee having charge or operating any metalliferous mine, whenever loss of life or serious accident shall occur in connection with the working of such mine, shall give notice immediately, and report all facts thereof to the Minister of Mines or the inspector, and the said inspector shall investigate and ascertain the causes and make a report, which shall be filed in the office of the Minister of Mines for future reference. *Ib.* s. 10.

11. The Lieutenant-Governor in Council shall have the power at any time to remove from office the inspector for incompetency, neglect of duty or abuse of the privileges of his office. *Ib.* s. 11.

EMPLOYMENT OF FEMALES, CHILDREN AND BOYS.

12. No boy under the age of twelve years of age; no woman or girl of any age, and no Chinese or Japanese person shall be employed in or allowed to be for the purpose of employment in, any mine to which this Act applies below ground. *Ib.* s. 12.

13. No boy under the age of sixteen years shall be employed underground for more than fifty-four hours in any one week, or more than ten hours in any one day. *Ib.* s. 13.

14. The person in charge of the machinery for raising or lowering men must be a male of at least eighteen years of age; but in no case shall the person in charge be of the Chinese or Japanese race. *Ib.* s. 14.

(1) The owner, agent, or manager of any mine to which this Act applies, shall keep in the office at the mine a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of all boys of the age of sixteen, and of all such young persons under the age of sixteen years, who are employed in the mines below ground, and of all women and young persons and children employed above ground in connection with the mine, and shall produce such register to any inspector under this Act at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

WAGES.

15. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirituous or fermented liquor, or other houses of entertainment, or any office, garden or place belonging or contiguous thereto or occupied therewith. *Ib.* s. 15.

RETURNS, NOTICES AND ABANDONMENTS.

16. On or before the 15th day of January in every year the owner, agent, manager, or lessee, of every mine to which this Act applies shall send to the Bureau of Mines, in the city of Victoria, on behalf of the Minister of Mines, a correct return specifying with respect to the year ending on the preceding 31st day of December the quantity of metal or ore wrought in such mine, and the number of persons ordinarily employed in or about such mine above or below ground, and any other information as may be required. *Ib.* s. 16.

17. The return shall be in such form as may be from time to time prescribed by the Minister of Mines, and the inspector or the Provincial mineralogist shall from time to time on application furnish forms for the purpose of such return. *Ib.* s. 17.

18. The Minister of Mines may publish the aggregate results of such returns, but the individual returns shall not be published without the consent of the person making the same, or the owner of the mine to which they relate, and no person except the inspector or provincial mineralogist, or the Minister of Mines shall be entitled without such consent to see the same. All such information shall be used for statistical purposes only. *Ib.* s. 18.

19. Where in or about any mine to which this Act applies, whether above or below ground, either—

(1) Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder or any steam boiler; or

(2) Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever, the owner, agent, manager, or lessee, of the mine shall, within 24 hours next after the explosion or accident, send notice in writing of the explosion or accident, and of the loss of life or personal injury occasioned thereby, to the inspector, and shall specify in such notice the character of the explosion or accident, and the number and names of persons killed and injured, respectively.

When any personal injury of which notice is required to be sent under this section results in the death of the person injured, notice in writing of the death shall be sent to the inspector within 24 hours after such death comes to the knowledge of the owner or agent. *Ib.* s. 19.

20. Where any working is commenced for the opening of a new mine, or the working of a mine is abandoned, the owner, agent, manager, or lessee of such mine shall, within two months after such commencement or abandonment, give notice thereof to the inspector; provided that this section shall only apply to any working or mine in which more than twelve persons are ordinarily employed below ground. *Ib.* s. 20.

21. Where any mine to which this Act applies is abandoned, or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of such mine, shall cause the top of the shaft, if there be such, to be and to be kept securely fenced for the prevention of accidents.¹ *Ib.* s. 21.

¹ *Evans v. Mostyn*, (1877) 2 C. P. D. 547. The respondents (owners in fee of mines), demised a lead mine for a term of years, subject to a

rent or royalties, such royalties to be paid upon the place where the ore should have been gotten or weighed, and before it could be taken away; the lease also reserving to the respondents powers of distress and re-entry if the royalties should be in arrear. The lessees ceased working the mine and allowed it to remain insufficiently fenced.

It was held, that, although the lease was still in force and undetermined, the respondents were guilty of an offence under section 13 of the English Act, 35 & 36 Vict. c. 77, as persons "interested in the minerals of the mine."

Lindley, J., said at p. 552:

"The real question is whether the lessors are persons interested in the mines under section 13. The language of that Act is to throw upon all answering the description of owners or persons interested in the minerals of the mine the obligation to fence abandoned shafts. If that had stood alone there could have been no doubt that these respondents were either owners of the mine or persons interested in the minerals thereof. Section 41, however, shows they are not owners. Then are they persons having an interest in the minerals of the mine? They are the immediate lessors, the persons to whom rent is payable. They have by the lease a lien for the rent and royalties upon the minerals, and a power to distrain, and a power of re-entry. Is it possible that persons in that position are not "persons interested in the minerals of the mine," within the meaning of the 13th section? They who contend that they are not liable are bound to show who answer the description more appropriately than these respondents. We are driven to say that the persons contemplated are the persons who have a present interest in the minerals and not a remote reversioner, as has been suggested."

In *Arkwright (appellant) v. Evans*, (1880) 49 L. J. M. C. 83. The appellant was lessee of a lead mine and of all the duties arising therefrom, under lease from Duchy of Lancaster, by which he had to pay as rent, all he might annually receive in respect of the mine, and an additional 5 shillings.

The mine was demised to him subject to a custom by which all the subjects of the realm have the right to search there for lead ore, upon paying certain duties, and the appellant had no pecuniary interest in the mine or in the minerals thereof.

Lindley, J. Under this lease, the lessee, the appellant, has to hand over to the Crown, all that he gets under it, and he has no pecuniary benefit from it whatever. Technically he is lessee, but instead of being lessee in the ordinary sense he is really only receiver and agent for the Crown.

Now is such a person an owner or person interested in the minerals under the statute of 1872? He has, so far as I can see, no interest whatever in the minerals except so far as he is lessee. Then the question is whether he is owner within the meaning of section 41 of the Act. He comes within only the negative part of the section, that "the term owner does not include a person who merely receives a royalty or rent from a mine, or is merely the owner of the soil, and not interested in the minerals of the mine."

It appears to me that he is in the position of a mere owner of the soil, and that he has no interest in the minerals save that he has

technically an interest in the dues and royalties, all of which he has to hand over to the Crown after he has received them. I, therefore, do not think that the appellant is the "owner" or "person interested" within the meaning of the Act, and that on these grounds the decision of the magistrates ought to be reversed; (i.e.) the appellant was held not liable for not fencing. The interpretation clauses of the English Act were not adopted in British Columbia.

As to what is sufficient fencing, see *Foster v. Owen*, (1892) 9 T. L. R. 22.

22. Where any mine to which this Act applies, in which more than twelve persons have ordinarily been employed below ground, is abandoned, the owner of such mine at the time of the abandonment shall, within three months after such abandonment, send to the Minister of Mines an accurate plan, on a scale of not less than thirty feet to the inch, or on such other scale as the plan last used in the mine is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Minister of Mines; but no person except the inspector or the provincial mineralogist shall be entitled, without the consent of the owner of the mine, to see such plan when so sent until after the lapse of ten years from the time of abandonment; provided that this section shall not apply to any mine opened up by means of tunnels or adit-levels, below which extend no workings in which water may accumulate. *Ib.* s. 22.

PLANS OF MINES.

23. The owner, agent, manager, or lessee of every mine to which this Act applies shall keep in the office of the mine, or in the principal office of the mines belonging to the same owner in the district in which the mine is situated, an accurate plan of the workings of such mine, showing the workings up to at least six months previously, other than workings which were last discontinued at a date more than twelve months before the commencement of this Act.

(1) The owner, agent, manager, or lessee of the mine shall produce to an inspector under this Act, at one of the aforesaid offices, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same.

(2) If the owner, agent, manager, or lessee of any mine fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any

portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner, agent, manager, or lessee to cause an accurate plan, such as is prescribed by this section, to be made within reasonable time, at the expense of the owner or lessee of the mine, on a scale of not less than a scale of thirty feet to one inch, or on such other scale as the plan used in the mine is constructed on.

(3) If the owner, agent, manager, or lessee fail, within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector, to make or cause to be made such plan, he shall be guilty of an offence against this Act;

Provided, that this section shall apply only to a mine to which this Act applies, and in which more than twelve persons are ordinarily employed below ground. *Ib. s. 23.*

INSPECTOR'S REPORT.

24. The inspector shall make an annual report of his proceedings during the preceding year to the Minister of Mines, which report shall be laid before the Legislative Assembly.

(1) The Minister of Mines may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or serious personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

25. The following general rules shall, so far as may be reasonably practicable, be observed in every mine to which this Act applies.

VENTILATION.

(1) An adequate amount of ventilation shall be constantly produced in every mine to such an extent that the shafts, winzes, sumps, levels, stopes, and working places of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.

EXPLOSIVES.

(2) Gunpowder, dynamite, or other explosive or inflammable substance shall not be stored anywhere under ground in the mine, but shall be stored in a magazine provided only for this purpose. Said magazine shall be placed far enough from any shaft, tunnel, engine or mining buildings as to insure their remaining intact in case of the explosion of the stock of explosive in said magazine.

(3) All explosives in excess of the amount required for a shift's or day's work shall be kept in the magazine.

(4) Each mine to which this Act applies shall have a suitable device for thawing such explosives as require it, and such device shall be heated only by the use of hot water or steam.

(5) Oils, candles, and other inflammable substances, fuse and detonating caps, shall not be stored with the explosives.

(6) An iron or steel tamping rod shall not be used for ramming or tamping the wadding or first part of the tamping on the explosives.

FIRE PROTECTION.

(7) Every plant using steam, where boiler, engine, blacksmith shop and shaft are in the same building, shall have a hose and hose-connection to injector or feed pump, and keep same ready for instant use, and the line of hose shall be sufficient to reach the farthest point of said plant.

CODE OF SIGNALS.

(8) Each mine using a code of signals shall use the following code:

I Bell—To hoist (when the bucket, skip or cage is not in motion).

I Bell—To stop (when the bucket, skip or cage is in motion).

II Bell—To lower.

III—I Bell—With care—to hoist (man on).

III—II Bell—With care—to lower (man on).

Other signals to meet other demands may be arranged, but the code of signals in full shall be plainly printed and placed in the engine-room, at the top of the shaft, and at each station or landing or level, together with a notice and penalty for wrong or improper signals.

(9) The bell-rope or other device for signalling shall be so constructed that signals can be sounded clearly and easily at the surface from any station, landing or level.

HOISTING AND LANDING MEN.

(10) The hoisting or lowering of employees at any mine shall be permitted or positively prohibited. Every working vertical shaft in which persons are lowered or raised shall, if exceeding three hundred feet in depth, be provided with a cage and guides. Such cage to be provided with a sufficient iron or steel covering or hood and catches.

DAILY INSPECTION OF MINE.

(11) A competent person or persons, who shall be appointed for the purpose, shall, once at least every twenty-four hours, examine the state of the external parts of the machinery, and the state of the head-gear, working places, levels, inclines, ropes and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts or inclines by which persons ascend or descend, and the guides, timbers and ladder-ways therein; shall make a true report of the result of such examination, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the person who made the same.

SHAFTS.

(12) Every shaft, incline or stope in which mechanical appliances for hoisting are used, and which is a means of travel for employees, shall be of at least two compartments, and shall be well timbered.

(13) The top of every shaft shall be covered, or so protected as to prevent persons or foreign objects falling into said shaft.

STATIONS.

(14) Each station or landing shall have a passage-way around one side of the shaft where the level or drift extends both ways from the said shaft.

LADDER-WAYS.

(15) A ladder permanently used for the ascent or descent of persons in the mine shall be sufficiently strong for the purpose demanded, and shall be firmly fastened and kept in good repair. In a vertical shaft the ladder shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows, and every such ladder shall have substantial platforms at intervals of not more than twenty feet.

(16) The said platform shall be closely covered, with the exception of an opening large enough to permit the passage of a man, and shall be so arranged that by no means could a person fall from one ladder through the opening to the next ladder.

(17) The ladder-way in a shaft, incline or stope shall be separated by a strong partition from the compartment or division of the shaft, incline or stope in which the material of the mine is hoisted.

WINZES AND MILL-HOLES.

(18) Each winze or mill-hole extending from one level or drift to another level or drift shall be protected at the top by a cover or a guard rail.

EXITS.

(19) As soon as it is practicable each mine to which this Act applies shall have two or more exits from the said mine, and levels or drifts driven each way from a shaft, or incline, or stope, shall be connected by upraisers or winzes equipped with ladders to provide exits, or means of escape in case of accident.

TIMBERING.

(20) Each shaft, incline, stope, tunnel, level or drift, and any working place in the mine to which this Act applies, shall be, when necessary, kept securely timbered or protected to prevent injury to any person from falling material.

GAUGES TO STEAM BOILERS.

(21) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and height of water in the boiler, and with a proper safety valve.

OBSERVANCE OF DIRECTIONS.

(22) Every person shall observe such directions with respect to working as may be given to him, with a view to comply with the sections of this Act.

(23) Every person who contravenes or does not comply with any of the general rules of this section shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this act applies, by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing, and, to the best of his power, enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance. *Ib.* s. 25.

26. The Lieutenant-Governor in Council may from time to time make such rules for the safety of mines in addition to these herein laid down, and not inconsistent therewith, as may be deemed advisable for the protection of the miners, and in and by such rules or regulations may impose fines or penalties for the infraction thereof, not exceeding those imposed in and by this Act; and the said rules and regulations shall have the force of law after they have been advertized for four weeks in the British Columbia Gazette. *Ib.* s. 26.

PENALTIES.

27. Every owner, agent, manager or lessee of a mine to which this Act applies, who is guilty of any act or omission in contraven-

tion of the provisions or requirements of this Act, shall be deemed guilty of an offence against this Act. *Ib.* s. 27.

28. Every person employed in or about a mine, other than an owner, agent, manager, or lessee, who is guilty of any act or omission which, in the case of an owner, agent, manager or lessee, would be an offence against this Act, shall be deemed guilty of an offence against this Act. *Ib.* s. 28.

29. Every person who is guilty of any offence against this Act shall be liable to a penalty not exceeding, if he is an owner, agent, manager or lessee, one hundred dollars, and if he is any other person, ten dollars, for each offence; and if the inspector has given written notice of any such offence, then, in case of an owner, agent, manager or lessee, to a further penalty not exceeding one hundred dollars and not less than ten dollars, for every day after such notice that such offence continues to be committed, and in cases of other persons, to a further penalty, not exceeding five dollars, for every day after such notice that such offence continues to be committed. *Ib.* s. 29.

30. Where a person who is an owner, agent, manager or lessee of or a person employed in or about a mine is guilty of any offence against this Act, which, in the opinion of the Court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the Court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

31. If any person feel aggrieved by any conviction made by a Court of summary jurisdiction on determining any information under this Act, the person so aggrieved may appeal therefrom. *Ib.* s. 31.

32. All offences under this Act, and all penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in a summary manner before a justice of the peace. *Ib.* s. 32.

33. The following provisions shall have effect :

(1) Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose ;

(2) The description of any offence under this Act, in the words of this Act, shall be sufficient in law ;

(3) Any exception, exemption, proviso, excuse or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and, if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant ;

(4) The owner, agent, manager or lessee may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person ;

(5) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved ;

(6) Any two justices of the peace holding a Court of summary jurisdiction shall not impose a penalty under this Act exceeding two hundred and fifty dollars, but any such Court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount. *Ib.* s. 33.

34. No prosecution shall be instituted against the owner, agent, manager or lessee of a mine, to which this Act applies, for any offence under this Act, which can be prosecuted before a Court of summary jurisdiction, except by an inspector, or with the consent in writing of the Minister of Mines ; and in the case of any offence of which the owner, agent, manager or lessee of a mine is not alleged to be personally the perpetrator, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, manager or lessee, if satisfied that he had taken such reasonable means as aforesaid.¹ *Ib.* s. 34.

¹ See *Foster v. Fyfe*, (1896) 2 Q. B. 104.

35. Nothing in this Act shall prevent any person from being indicted or liable under any other Act, or otherwise, to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence; and if the Court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person. *Ib.* s. 35.

For such offence under any other Act, or otherwise, the Court may adjourn the case to enable such proceedings to be taken.

36. A person who is the owner, agent, manager or lessee of any mine to which this Act applies, or the father, son or brother of such owner, agent or manager, shall not act as a Court or member of a Court of Summary Jurisdiction in respect of any offence under this Act. *Ib.* s. 36.

37. Where a penalty is imposed under this Act for neglecting to send notice of any explosion or accident, or for any offence against this Act, which has occasioned loss of life or personal injury, the Minister of Mines may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident or offence, or among some of them;

Provided that,

(1) Such persons did not, in his opinion, occasion, or contribute to occasion, the explosion or accident, and did not commit and were not parties to committing the offence;

(2) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident or offence.

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the Provincial Treasurer. *Ib.* s. 37.

REVISED STATUTES OF BRITISH COLUMBIA (1897),
CHAPTER 137.

An Act to encourage Coal Mining.

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of British Columbia,
enacts as follows:

SHORT TITLE.

1. This Act may be cited as the "Coal Mines Act." C. A. 1888,
c. 83, s. 1.

PROSPECTING LICENSE.

2. Any person desirous of prospecting for coal or petroleum and acquiring a lease of any lands held by the Crown for the benefit of the Province, under which coal measures or petroleum are believed to exist, or wishing to procure a license for the purpose of prospecting for coal or petroleum upon lands under lease from the Crown, in which the mines and minerals, and power to work, carry away, and dispose of the same, is excepted or reserved, shall, before entering into possession of the particular part of said coal lands he or they may wish to acquire and work for coal, place at one angle or corner of the land to be applied for a stake or post, at least four inches square, and standing not less than four feet above the surface of the ground; and upon such initial post he shall inscribe his name, and the angle represented thereby, thus: "A. B.'s N. E. corner" (meaning north-east corner), or as the case may be, and shall cause a written or printed notice of his intention to apply for such a license to be posted on some conspicuous part of the land applied for by him, and on the Government office of the district for thirty clear days. He shall also publish a notice of his intention to apply for such license for thirty days in the British Columbia Gazette, and in some newspaper circulating in the district. 1892, c. 31, s. 2.

3. After the expiration of the thirty days' notice, and within two months from the date of its first publication in the British Columbia

Gazette, he shall make application in writing to the Assistant Commissioner of Lands and Works for the district within which the land required is situate, for a prospecting license over such land for any term not exceeding one year. Such application shall be in duplicate, and shall be illustrated by plans or diagrams showing approximately the position thereof, and shall give the best practicable written description of the plot of land over which the privilege is sought; and the application shall be accompanied by a fee of fifty dollars for each and every licensee. The Assistant Commissioner shall then forward one copy of the application and plan, together with the fees and his report, to the Chief Commissioner of Lands and Works, who shall, if no valid objection has been substantiated, grant to such applicant a prospecting license as aforesaid. 1892, c. 31, s. 3.

4. Every piece of land sought to be acquired under the provisions of this Act shall be of a rectangular shape, and each license shall include within the general limits therein defined land not exceeding six hundred and forty acres for each licensee, and such land shall be in one block. Six hundred and forty acres shall measure eighty chains by eighty chains, and all lines shall be run true north and south, and true east and west. 1892, c. 31, s. 4.

5. It shall be lawful for the Lieutenant-Governor in Council to grant a lease of lands covered by prospecting license, for coal mining purposes to any licensee who produces satisfactory evidence that he has discovered coal on the lands held under his license, for a term of five years, at an annual rental of ten cents per acre; and if during the term of such lease, or at the expiration of such term and within three months thereafter, the lessee can show conclusively that he has continuously and vigorously prosecuted the work of coal mining, and has fully carried out the provisions of his lease, he shall be entitled to purchase the said lands at the rate of five dollars per acre, payable in full in one payment at the time of sale:

- (a) Provided that a lease shall not be issued until after the land has been surveyed in a legal manner, and to the satisfaction of the Chief Commissioner of Lands and Works, by the applicant :
- (b) Provided, also, that in addition to the annual rental of ten cents per acre the lessee shall pay to and for the use of Her Majesty a royalty of five cents per ton upon every ton of merchantable coal and one per cent. per barrel on all petroleum raised or gotten from the leased premises :

- (c) Provided, further, that the lease shall contain provisions binding the lessee to carry on coal mining, and works incidental thereto, continuously, and to make a reasonable use, within reasonable periods, of the premises thereby granted, and to apply the same to the purposes intended, to the satisfaction of the Chief Commissioner of Lands and Works. And any such lease may be subject to any general stipulations which the Lieutenant-Governor in Council may see fit to impose:
- (d) Provided, also, any number of persons, not exceeding ten, uniting in partnership for the purpose of holding and working coal or petroleum lands which adjoin each other, and for which leases have been granted, shall be entitled to work such land as a firm, and in such case it shall not be necessary for each leasehold to be worked separately, provided work is carried on upon any one of them to the satisfaction of the Chief Commissioner of Lands and Works. 1892, c. 31, s. 5, & 1895, c. 37, s. 3.

6. Every license shall absolutely cease at the expiration thereof, and a new license over the same land or any part thereof, may be granted to any new applicant, upon complying with the requirements of this Act. C. A. 1888, c. 83, s. 9.

7. Every applicant upon proving to the satisfaction of such Chief Commissioner of Lands and Works or Assistant Commissioner, that he has, *bona fide*, explored for coal during the said term of one year, shall be entitled to an extension of the said term for the second period of one year, upon payment of a further sum of fifty dollars for each and every license. An extension of the term for a third period of one year may be granted on like conditions and terms as the first extension.

(a) Provided, also, any number of license holders, not exceeding ten, uniting in partnership for the purpose of prospecting for coal or petroleum, on lands which adjoin each other and which are covered by the licenses held by such license holders, shall be entitled to prospect such lands as a firm; and in each case it shall not be necessary for each license holder to prospect separately, provided prospecting is carried on upon the land covered by one of the said licenses, to the satisfaction of the Chief Commissioner of Lands and Works. C. A. 1888, c. 83, s. 10, & 1895, c. 37, s. 2.

8. Every person holding a prospecting license may use the timber and stone on the land included in such license for the purpose of his mining operations, and for erection of buildings on said lands, but not further or otherwise. C. A. 1888, c. 83, s. 11.

9. In case of any dispute as to the right or title to a prospecting license or to any claim under this Act, the same shall be decided by the County Court or a Judge thereof upon petition, in a summary way, who shall have full power to order what shall be done in the premises and as to the costs thereof. *Ib.* s. 12.

10. No prospecting license issued under this Act shall be transferred by the licensee to any other person, unless a written notice to the Chief Commissioner of Lands and Works shall have been first given. *Ib.* s. 13.

11. No coal prospecting license shall be issued over any Crown lands which have been leased, or in respect of which a timber license has been issued, unless and until due security be given, to the satisfaction of the Chief Commissioner of Lands and Works, for payment of any damage which may ensue to the leaseholder or licensee in respect of the operations to be carried on under such coal prospecting license. 1890, c. 32, s. 3.

12. Notwithstanding anything in any Act contained, it shall be lawful to grant licenses to prospect for coal over reserved lands, but such licenses shall be subject to such restrictions, conditions, and regulations as may be imposed by the Lieutenant-Governor in Council. 1891, c. 15, s. 16.

RIGHTS OF WAY.

13. It shall be lawful for any proprietor or proprietors of a mine to acquire such a portion of any Crown lands, or lands held under pre-emption or Crown grants, lease or license, by any person or persons, as may be necessary for affording to the proprietors of any mine communication with the sea-shore or any river, or public highway, together with a block of land not exceeding five acres at the terminus of such line of communication, at the sea, river, highway, or other place of shipment. Provided always, that the land so acquired shall only be used for transporting, storing and shipping coal, and for receiving and transporting such materials, commodities, and persons as may be essential to the successful transaction of the business of such mine. C. A. 1888, c. 83, s. 14, & 1890, c. 32, s. 4.

14. The conveyance of any land acquired under the provisions of the foregoing section shall not confer upon the grantee or grantees therein named the right to the ownership of any minerals thereunder, except by consent of the grantor named in such conveyance. C. A. 1888, c. 83, s. 15.

15. Prior to the acquisition of such land, compensation shall be given to the person whose land shall be taken, and if the amount of such compensation, and the quantity of land to be taken, shall not be agreed upon between the person whose land is to be taken and the proprietors of the mine, the amount thereof shall be ascertained by arbitration in the following manner. *Ib.* s. 16.

16. In the event of the parties not concurring in the appointment of a single arbitrator, each of such parties, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred, and every appointment of an arbitrator shall be made, on the part of each party under his hand, or if a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death or removal from office of either party operate as a revocation; and if after any such dispute shall have arisen a request in writing, in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail, for fourteen days after service of such request, to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final. *Ib.* s. 17.

17. If, before the matters so referred shall be determined any arbitrator appointed by either party die or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fails to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as afore-

said shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid. *Ib.* s. 18.

18. Where more than one arbitrator has been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ; or if such umpire shall die, or refuse, or become incapable to act, they shall forthwith after such death, refusal, or incapacity, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final. *Ib.* s. 19.

19. If, in any or either of the cases aforesaid, the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, two Justices of the Peace shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final. *Ib.* s. 20.

20. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined, under the provisions of this Act, in the same manner as if such arbitrator had not been appointed. *Ib.* s. 21.

21. If, where more than one arbitrator has been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by the other parties. *Ib.* s. 22.

22. If, where more than one arbitrator shall have been appointed, and where neither of them shall neglect or refuse to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid. *Ib.* s. 23.

23. The costs of the arbitration and award shall be in the discretion of the said arbitrators or umpire, who may award by whom, to whom, and in what manner the same may be paid. *Ib.* s. 24.

24. The submission to any such arbitration may be made a rule of the Supreme Court, on the application of either of the parties. *Ib.* s. 25.

25. No award shall be set aside for irregularity or error in matter of form. *Ib.* s. 26.

26. The arbitrators or umpire may, by summons or order in writing, signed by any one of them, to be served upon or left at the last usual place of residence of the person to whom it is addressed, command the attendance, from any part of the province, of any witness, or the production of any documents required by any of the parties, and may swear the said witness to testify truly respecting the matters on which he is to be interrogated; and the disobedience of such summons or order shall subject the person disobeying to a penalty of not less than five dollars, nor more than twenty-five dollars, to be recovered before any Justice of the Peace, and levied under the warrant of such Justice, by distress and sale of the goods and chattels of the offender, unless such person establishes reasonable cause for such disobedience. *Ib.* s. 27.

REVISED STATUTES OF BRITISH COLUMBIA (1897),
CHAPTER 138.

An Act to make Regulations with respect to Coal Mines.

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of British Columbia,
enacts as follows:—

SHORT TITLE.

1. This Act¹ may be cited as the “Coal Mines Regulations Act.”^{2 3} C. A. 1888, c. 84, s. 1.

¹ 1877, No. 15, s. 1.

² The principal Act has been amended as follows:

In 1890, by c. 33, s. 1 (26 April, 1890). See s. 4 hereof.

In 1894, by c. 5 (11 April, 1894). Repealed in 1895, c. 38, s. 7.

In 1895, by c. 38 (21 February, 1895). See ss. 69, 69a, 77 hereof.

³ The English legislation, which was consolidated by the Coal Mines Regulation Act, 1887 (50 and 51 Vict. c. 58), have been largely used as the model for this Act, but in applying the decisions under the English Act the variations must be considered.

INTERPRETATION.

2. In this Act, unless the context otherwise requires:—

The term “mine” includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any coal mine, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a coal mine, and any such shaft, level, and inclined plane, and belonging to the coal mine.

The term “shaft” includes pit.

The term “plan” includes a map and section, and a correct copy or tracing of any original plan as so defined.¹

¹ See *Evans v. Lady Mostyn, etc.*, (1877) 2 C. P. D. 547.

The term "owner,"² when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee,³ or occupier of any mine, or of any part thereof, and does not include a person or body incorporate, who merely receives a royalty,⁴ rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine, but any contractor for the working of any mine or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability.

² *R. v. Brown*, (1857) 7 E. & B. 757.

³ *Stott v. Dickinson*, (1876) 34 L. T. N. S. 291.

⁴ *Arkwright v. Evans*, (1880) 49 L. J. M. C. 82.

The term "agent," when used in relation to any mine, means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof, and superior to a manager appointed in pursuance of this Act.

The term "Minister of Mines" means the person so acting for the time being.

The term "child" means a child under the age of twelve years.

The term "young person" means a person of the age of thirteen years and under the age of fourteen years.

The term "woman" means a female of the age of fourteen years and upwards.⁵ C. A. 1888, c. 84, s. 2.

⁵ 1877, No. 15, s. 65; 1883, c. 2, s. 2.

EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN.

3. Boys under twelve years of age shall not be employed in or about a mine to which this Act applies.¹ 1888, No. 84, s. 3.

¹ 1877, No. 15, s. 2.

4. ¹ No boy under the age of twelve years, and no woman or girl of any age and no Chinaman,² shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.³ C. A. 1888, c. 84, s. 4, and 1890, c. 33, s. 1.

¹ 1877, No. 15, s. 2.

² Inserted by 1890, c. 33, s. 1 (26 April, 1890).

³ In re Coal Mines Regulation Amendment Act, 1890 (1896), 5 B. C. R. 306, it was held by the Supreme Court of B. C. that this section, as amended as above, is within the constitutional power of the Provincial Legislature as being a Regulation of Coal Mines, and is not *ultra vires*, as an interference with "aliens."

5. ¹ A boy of the age of thirteen and under the age of fourteen years shall not be employed in or allowed to be, for the purpose of employment in any mine to which this Act applies, below ground, except in a mine in which the Minister of Mines, by reason of thinness of the seams of such mine, considers such employment necessary, and by order published as he may think fit for the time being allows the same, nor in such case:—

- (a) For more than five days in one week; or
- (b) If he is employed for more than three days in any one week for more than six hours in any one day; or
- (c) In any other case for more than six hours in any one day; or
- (d) Otherwise than in accordance with the regulations hereinafter contained.¹ C. A. 1888, c. 84, s. 5.

¹ 1877, No. 15, s. 4.

6. A boy of the age of twelve and under the age of fourteen shall not be employed in or allowed to be, for the purposes of employment in any mine to which this Act applies, below ground for more than thirty hours in any one week or more than six hours in any one day, or otherwise than in accordance with the regulations hereinafter contained.¹ C. A. 1888, c. 84, s. 6.

¹ 1883, c. 2, s. 1.

7. ¹ For the purpose of the provisions of this Act with respect to the employment of boys and male young persons in a mine below ground, the following regulations shall have effect, that is to say:—

- (1) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than sixteen hours between each period of employment;
- (2) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface;
- (3) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.
- (4) No boy under fourteen years of age shall work below ground for more than six hours in any one day.¹ C. A. 1888, c. 84, s. 7.

¹ 1877, No. 15, s. 6; 1883, c. 2, s. 2.

8. ¹ With respect to women, young persons, and children employed above ground in connection with any mine to which this Act applies the following provisions shall have effect:—

- (1) No child under the age of twelve years shall be so employed;
- (2) The regulations of this Act with respect to boys under fourteen years of age shall apply to every child so employed;
- (3) The regulations of this Act with respect to male young persons under fourteen years of age shall apply to every woman and young person so employed.
- (4) No woman, young person, or child shall be so employed between the hours of nine at night and five on the following morning or on Sunday, or after two o'clock on Saturday afternoon;
- (5) Intervals for meals shall be allowed to every woman, young person and child so employed, amounting in the whole to not less than one-half hour during each period of employment which exceeds five hours, and to not less than one hour and a half during each period of employment which exceeds six hours.

The provisions of this section as to the employment of women, young persons, and children after two o'clock on Saturday afternoon, shall not apply in the case of any mine so long as it is exempted in writing by the Minister of Mines. C. A. 1888, c. 84, s. 8.

¹ 1877, No. 15, s. 7; 1883, c. 2, s. 2.

9. ¹ The owner, agent, or manager of every mine to which this Act applies shall keep in the office at the mine, a register, and shall cause to be entered in such register, the name, age, residence, and date of first employment of all boys of the age of twelve, and under the age of thirteen years, and of all male young persons under the age of fourteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in connection with the mine, and shall produce such register to any inspector under this Act, at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.¹ C. A. 1888, c. 84, s. 9.

¹ 1877, No. 15, s. 8, part; 1883, c. 2, s. 2.

10. ¹ The immediate employer of every boy or male young person of the ages aforesaid, other than the owner, agent, or manager of

the mine, before he causes such boy or male young person to be in any mine to which this Act applies below ground, shall report to the manager of such mine, or some person appointed by such manager, that he is about to employ him in such mine.¹ C. A. 1888, c. 84, s. 10.

¹ 1877, No. 15, s. 8, part.

11. ¹ Where there is a shaft or inclined plane or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up or down along such shaft, plane or level by means of an engine, windlass, or gin driven or worked by steam or any mechanical power, or by an animal, or by manual labor, a person shall not be allowed to have charge of such engine, windlass or gin, or of any part of the machinery, ropes, chains or tackle connected therewith, unless he is a male of at least eighteen years of age. When the engine, windlass or gin is worked by an animal, the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the engine, windlass or gin, but such driver shall not be under twelve years of age. C. A. 1888, c. 84, s. 11.

¹ 1877, No. 15, s. 9.

12. ¹ If any person contravenes or fails to comply with or permits any person to contravene or fail to comply with any provision of this Act with respect to the employment of women, girls, young persons, boys, Chinamen, or children, or to the attendance of boys at school, or to the registry of boys and male young persons, or of women, young persons and children, or to the reporting the intended employment of boys or male young persons, or to the employment of persons about any engine, windlass or gin, he shall be guilty of an offence against this Act, and in case of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power, enforcing the provisions of this Act to prevent such contravention or non-compliance. C. A. 1888, c. 84, s. 12.

¹ 1877, No. 15, s. 10, part.

13. ¹ If it appear that a child, boy, or young person, or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was at that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner,

agent or manager of the mine and employer shall be exempt from any penalty, and the parent or guardian shall for such misrepresentation be deemed guilty of an offence against this Act. C. A. 1888, c. 84, s. 13.

¹ 1877, No. 15, s. 10, part.

WAGES.

14. ¹ No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, beer, wine, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith. C. A. 1888, c. 84, s. 14.

¹ 1877, No. 15, s. 11, part.

15. ¹ Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, the last preceding section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing, and to the best of his power enforcing, the provisions of the last preceding section to prevent such contravention or non-compliance. 1888, c. 84, s. 15.

¹ 1877, No. 15, s. 11, part.

16. ¹ Where the amount of wages paid to any of the persons employed in a mine to which this Act applies depends on the amount of coal gotten by them, such persons shall, after this Act comes into force, unless the mine is exempted by the Minister of Mines, be paid according to the weight of the coal gotten by them, and such mineral shall be truly weighed ² accordingly: Provided, always, that nothing herein contained ³ shall preclude the owner, agent or manager of the mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than coal contracted to be gotten, which shall be sent out of the mine with the coal contracted to be gotten,⁴ or in respect of any tubs, baskets or hutches being improperly filled in those cases where they are filled by the getter of the coal or his drawer, or by the person immediately employed by him, such deductions being determined by the banksman or weigher and check-weigher (if there be one), or in case of difference, by a third party, to be mutually agreed on by the owner, agent,

or manager of the mine on the one hand, and the persons employed in the mine on the other. C. A. 1888, c. 84, s. 16.

¹ 1877, No. 15, s. 12, part.

² See *Kerney v. The White Haven C. Co.*, (1893) 1 Q. B. 700.

³ See *Nethersell Colliery Co. v. Bourne*, (1889) 14 A. C. 228; *Brace v. Abercarn C. Co.*, (1891) 2 Q. B. 699.

⁴ See *Huggins v. London*, (1891) 1 Q. B. 496.

17. ¹ Where it is proved to the satisfaction of the Minister of Mines that, by reason of any exigencies existing in the case of any mine or class of mines to which the last preceding section applies, it is requisite or expedient that the persons employed in such mine or class of mines should not be paid by the weight of the coal gotten by them, or that the beginning of such payment by weight should be postponed, such Minister of Mines may, if he think fit, by order,² exempt such mine or class of mines from the provisions of that section, either without condition or during the time and upon the conditions specified in the order, or postpone in such mine or class of mines the beginning of such payment by weight, and may from time to time revoke or alter any such order. C. A. 1888, c. 84, s. 17.

¹ 1877, No. 15, s. 12, part.

² See *Dickinson v. Handsley*, (1888) 5 T. L. R. 339.

18. ¹ If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, the last but one preceding section, he shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with that section by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing, and to the best of his power enforcing, the provisions of that section to prevent such contravention and non-compliance. C. A. 1888, c. 84, s. 18.

¹ 1877, No. 15, s. 12, part.

19. ¹ The persons who are employed in a mine to which this Act applies, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as a "check-weigher") at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed. The check-weigher² may be appointed by the persons employed from time to time in the mine. He shall have every facility afforded to him to take a correct account of the weighing for the persons by whom he is

so stationed; and if in any mine proper facilities are not afforded to the check-weigher as required by this section, the owner, agent, and manager of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by enforcing to the best of his power the provisions of this section to prevent such contravention or non-compliance. C. A. 1888, c. 84, s. 19.

¹ 1877, No. 15, s. 13, part.

² *Hopkinson v. Caunt*, (1885) 14 Q. B. D. 592.

20. ¹ The check-weigher shall not be authorized in any way to impede or interrupt the working of the mine, or to interfere with the weighing, but shall be authorized only to take such account as aforesaid, and the absence of the check-weigher shall not be a reason for interrupting or delaying such weighing. C. A. 1888, c. 84, s. 20.

¹ 1877, No. 15, s. 13, part.

21. ¹ If the owner, agent, or manager of the mine desires the removal of a check-weigher on the ground that such check-weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or has otherwise misconducted himself, he may complain to any Court of summary jurisdiction, who, if of opinion that the owner, agent, or manager shows sufficient *prima facie* ground for the removal of such check-weigher, shall call upon the check-weigher to show cause against his removal. On the hearing of the case the Court shall hear the parties, and, if they think that at the hearing sufficient ground is shown by the owner, agent or manager to justify the removal of the check-weigher, they shall make a summary order for his removal,² and the check-weigher shall thereupon be removed, but without prejudice to the stationing of another check-weigher in his place. C. A. 1888, c. 84, s. 21.

¹ 1877, No. 15, s. 13, part.

² *Prentice v. Hall*, (1878) 26 W. R. 237; *Whitehead v. Holdsworth*, (1878) 4 Ex. D. 13.

22. ¹ Proceedings for the removal of a check-weigher shall be deemed to be a matter on which two justices of the peace have authority by law to make an order in a summary manner, and the Court may in every case make such order as to the costs of the proceedings as they think just. C. A. 1888, c. 84, s. 22.

¹ 1877, No. 15, s. 13, part, and s. 57, part.

23. ¹ If in pursuance of any order of exemption made by the Minister of Mines, the persons employed in a mine to which this Act

applies are paid by the measure or gauge of the material gotten by them, the provisions of the four last preceding sections shall apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing shall be construed accordingly. C. A. 1888, c. 84, s. 23.

¹ 1877, No. 15, s. 13, part.

SINGLE SHAFTS.

24. ¹ The owner, agent, or manager of a mine to which this Act applies shall not employ any person in such mine, or permit any person to be in such mine for the purpose of employment therein, unless there are in communication with every seam of such mine for the time being at work at least two shafts or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means of ingress and egress are available to the persons employed in such seam, whether such two shafts or outlets belong to the same mine, or one or more of them belong to another mine, and unless there is a communication of not less than four feet wide and three feet high between such two shafts or outlets, and unless there is at each of such two shafts or outlets or upon the works belonging to the mine, and either in actual use or available for use within a reasonable time, proper apparatus for raising and lowering persons at each such shaft or outlet; Provided that such separation shall not be deemed incomplete by reason only that openings through the strata between the two shafts or outlets have been made for temporary purposes of ventilation, drainage, or otherwise; or in the case of mines where inflammable gas has not been found within the preceding twelve months for the same purposes although not temporary. C. A. 1888, c. 84, s. 24.

¹ 1877, No. 15, s. 15, part.

25. ¹ Every owner, agent, or manager of a mine who acts in contravention of or fails to comply with the last preceding section, shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 25.

¹ 1877, No. 15, s. 15, part.

26. ¹ The Supreme Court, whether any other proceedings have or have not been taken, may, upon the application of the Attorney-General, prohibit by injunction the working of any mine in which any person is employed or is permitted to be for the purpose of employment, in contravention of the last but one preceding section, and may

award such costs in the matter of the injunction as the Court thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act. Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner, agent, or manager of such mine not less than ten days before the application is made. C. A. 1888, c. 84, s. 26.

¹ 1877, No. 15, s. 15, part.

27. ¹ No person shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine, where the same is required by this Act, or be liable under any contract to any penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this Act, with respect to shafts or outlets. C. A. 1888, c. 84, s. 27.

¹ 1877, No. 15, s. 16.

28. ¹ The provisions of this Act with respect to shafts or outlets shall not apply in the following cases, that is to say:—

- (1) In the case either of opening a new mine for the purpose of searching for or proving minerals, or of any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connection with each shaft or outlet in such new mine or such working;
- (2) In the case of any proved mine so long as it is exempted in writing by the Minister of Mines on the ground either:
 - (a) That the quantity of mineral proved is not sufficient to repay the outlay which would be occasioned by the sinking or making of a second shaft or outlet; or
 - (b) If the mine is not a mine with inflammable gas that sufficient provision has been made against danger from other causes than explosions of gas by using stone, brick, or iron in the place of wood for the lining of the shaft and the construction of the mid-wall; or

- (c) That the workings in any seam of a mine have reached the boundary of the property or other extremity of the mineral field of which such seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of such seam; and so long as there are not employed below ground at any one time in the whole of the different seams in connection with the shaft or outlet in any such mine, more than twenty persons, or (if the mine is not a mine with inflammable gas) than such larger number of persons as may for the time being be allowed by the Minister of Mines;

- (3) ¹ In the case of any mine one of the shafts or outlets of which has become, by reason of some accident, unavailable for the use of the persons employed in the mine, so long as such mine is exempted in writing by the Minister of Mines, and as the conditions on which such exemption is granted are duly observed. C. A. 1888, c. 84, s. 28.

¹ 1877, No. 15, s. 17.

Division of Mine Into Parts.

29. ¹ Where two or more parts of a mine are worked separately, the owner or agent of such mine may give notice in writing to that effect to the inspector of the district, and thereupon each such part shall, for all purposes of this Act, be deemed to be a separate mine. C. A. 1888, c. 84, s. 29.

¹ 1877, No. 15, s. 20, part.

30. ¹ If the Minister of Mines is of opinion that the division of a mine, in pursuance of the last preceding section, tends to lead to the evasion of the provisions of this Act, or otherwise to prevent the carrying of this Act into effect, he may object to such division by notice served on the owner or agent of the mine, and such owner or agent, if he decline to acquiesce in such objection, may, within twenty days after the receipt of such notice, send a notice to the district inspector hereinafter mentioned, stating that he declines so to acquiesce, and thereupon the matter shall be determined by arbitration in manner

provided by this Act; and the date of the receipt of the last mentioned notice shall be deemed to be the date of the reference. C. A. 1888, c. 84, s. 30.

¹ 1877, No. 15, s. 20, part.

Certificated Managers.

31. ¹ Every mine to which this Act applies shall be under the control and daily supervision of a manager,² and the owner or agent of every such mine shall nominate himself or some other person (not being a contractor for getting the coal in such mine, or a person in the employ of such contractor) to be the manager of such mine, and shall send written notice to the district inspector hereinafter mentioned of the name and address of such manager. C. A. 1888, c. 84, s. 31.

¹ 1877, No. 15, s. 21, part.

² *Howells v. Landore Steel Co.*, (1874) L. R. 10 Q. B. 62.

32. ¹ A person shall not be qualified to be a manager of a mine to which this Act applies unless he is for the time being registered as the holder of a certificate under this Act. C. A. 1888, c. 84, s. 32.

¹ 1877, No. 15, s. 21, part.

33. ¹ If any mine to which this Act applies is worked for more than fourteen days without there being such a manager for that mine as required by this Act, the owner and agent of such mine shall each be liable to a penalty not exceeding two hundred and fifty dollars, and to a further penalty not exceeding fifty dollars for every day during which such mine is so worked.

Provided that:—

(a) The owner of such mine shall not be liable to any such penalty if he prove that he had taken all reasonable means by the enforcement of this section to prevent the mine being worked in contravention of this section;

(b) If for any reasonable cause there is for the time being no manager of a mine qualified as required by this Act, the owner or agent of such mine may appoint any competent person not holding a certificate under this Act to be manager for a period not exceeding two months, or such longer period as may elapse before such person has any opportunity of obtaining by examination a certificate under

this Act, and shall send to the inspector of the district a written notice of the name and address of such manager, and of the reason of his appointment; and,

(c) A mine in which less than thirty persons are ordinarily employed below ground, or of which the average daily output does not exceed twenty-five tons, shall be exempt from the provisions of this section, unless the inspector of the district, by notice in writing served on the owner or agent of such mine, requires the same to be under the control of a manager. C. A. 1888, c. 84, s. 33.

¹ 1877, No. 15, s. 21, part.

34. ¹ For the purpose of granting in any part of British Columbia, to be from time to time defined by an order in writing by the Minister of Mines, certificates of competence to managers of mines for the purposes of this Act, examiners shall be appointed by a board constituted as hereinafter mentioned. C. A. 1888, c. 84, s. 34.

¹ 1877, No. 21, s. 22, part.

35. ¹ The Minister of Mines may, from time to time, appoint, remove, and re-appoint fit persons to form such board as follows, namely, two persons being owners, agents, or managers of a mine, and two persons being practical coal miners, and one inspector under this Act; the persons so appointed shall, during the pleasure of the Minister of Mines, form the board for the purposes of the said examinations in the said part of British Columbia. C. A. 1888, c. 84, s. 35.

¹ 1877, No. 15, s. 22, part; 1878, c. 11, s. 2.

36. ¹ The proceedings of the board shall be in accordance with the rules contained in Schedule Two of this Act; the board shall from time to time appoint examiners, not being members of the board except with the consent of the Minister of Mines, to conduct the examinations in the part of British Columbia for which such board acts, of applicants for certificates of competency under this Act, and may from time to time, make, alter and revoke rules as to the conduct of such examinations and the qualifications of the applicant, so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of mines in the said part of British Columbia; every such board shall make from time to time to the Minister of Mines a report and return of their proceedings, and of such other matters as the Minister of Mines may from time to time require. C. A. 1888, c. 84, s. 36.

¹ 1877, No. 15, s. 23.

37. ¹ The Minister of Mines may from time to time make, alter and revoke rules as to the places and times of examinations of applicants for certificates of competency under this Act, the number and remuneration of the examiners, and the fees to be paid by the applicants, so that the fees do not exceed those specified in Schedule One to this Act. Every such rule shall be duly observed by every board appointed under this Act to whom it applies. C. A. 1888, c. 84, s. 37.

¹ 1877, No. 15, s. 24.

38. ¹ The Minister of Mines shall deliver to every applicant who is duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct, such a certificate of competency as the case requires. The certificate shall be in such form as the Minister of Mines from time to time directs, and a register of the holders of such certificates shall be kept by such person and in such manner as the Minister of Mines from time to time directs. C. A. 1888, c. 84, s. 38.

¹ 1877, No. 15 s. 25.

39. ¹ Certificates of service for the purposes of this Act, shall be granted by the Minister of Mines to every person who satisfies him either that before the passing of this Act he was acting, and has since that day acted, or that he has at any time within five years before the passing of this Act for a period of not less than twelve months acted, in the capacity of a manager of a mine or such part of a mine as can under this Act be made a separate mine for the purposes of this Act. C. A. 1888, c. 84, s. 39.

¹ 1877, No. 15, s. 26, part.

40. ¹ Every such certificate of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and a certificate of service may be refused to any person who fails to give a full and satisfactory account of the particulars aforesaid, or to pay such registration fees as the Minister of Mines may direct, not exceeding those specified in Schedule One to this Act. C. A. 1888, c. 84, s. 40.

¹ 1877, No. 15, s. 26, part.

41. ¹ A certificate of service shall have the same effect for the purposes of this Act as a certificate of competency granted under this Act. C. A. 1888, c. 84, s. 41.

¹ 1877, No. 15, s. 26, part.

42. ¹ If at any time representation is made to the Minister of Mines by an inspector or otherwise, that any manager holding a certificate under this Act is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Minister of Mines may, if he think fit, cause inquiry to be made into the conduct of such manager, and with respect to such inquiry the following provisions shall have effect:—

- (1) The inquiry shall be public, and shall be held at such place as the Minister of Mines may appoint, by such County Court Judge, police magistrate, stipendiary magistrate, or other person or persons as may be directed by the Minister of Mines, and either alone or with the assistance of any assessor or assessors named by the Minister of Mines;
- (2) The Minister of Mines shall, before the commencement of the inquiry, furnish to the manager a statement of the case upon which the inquiry is instituted;
- (3) Some person appointed by the Minister of Mines shall undertake the management of the case;
- (4) The manager may attend the inquiry by himself, his counsel, attorney, or agent, and may, if he think fit, be sworn and examined as an ordinary witness in the case;
- (5) The persons appointed to hold the inquiry, in this Act referred to as the Court, shall, upon the conclusion of the inquiry, send to the Minister of Mines a report containing a full statement of the case, and their opinion thereon, and such report of or extracts from the evidence as the Court think fit;
- (6) The Court shall have power to cancel or suspend the certificate of the manager, if they find that he is by reason of incompetency or gross negligence, or his having been convicted of an offence against this Act, unfit to discharge his duty;
- (7) The Court may, if they think fit, require a manager to deliver up his certificate, and if any manager fail, without sufficient cause to the satisfaction of the Court, to comply with such requisition, he shall upon summary conviction of such failure by such Court, be liable to a penalty not exceeding five hundred dollars. The Court shall hold a certificate so delivered until the conclusion of the investigation, and shall then either restore, cancel, or suspend the same, according to their judgment on the case;

- (8) The Court shall have, for the purpose of the inquiry, all the powers of a Court of Summary Jurisdiction, and all the powers of an Inspector under this Act;
- (9) The Court may also, by summons under their hands, require the attendance of all such persons as they think fit to call before them and examine for the purpose of the inquiry, and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to the Registrar of the Supreme Court, who, on request under the hands of the members of the Court, shall ascertain and certify the proper amount of such expenses.¹ C. A. 1888, c. 84, s. 42.

¹ 1877, No. 15, s. 27.

43. ¹ The Court may make such order as they think fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any Court of Summary Jurisdiction as if such costs and expenses were a penalty imposed by such Court. C. A. 1888, c. 84, s. 43.

¹ 1877, No. 15, s. 28, part.

44. ¹ The Minister of Mines may, if he think fit, pay to the members of the Court of Inquiry, including any assessors, such remuneration as he may think proper. C. A. 1888, c. 84, s. 44.

¹ 1877, No. 15, s. 28, part.

45. ¹ Any costs and expenses ordered by the Court to be paid by the Minister of Mines, and any remuneration paid under the last preceding section, shall be paid out of moneys provided by the Legislature. C. A. 1888, c. 84, s. 45.

¹ 1877, No. 15, s. 28, part.

46. ¹ Where a certificate of a manager is cancelled or suspended in pursuance of this Act, the Minister of Mines shall cause such cancellation or suspension to be recorded in the register of holders of certificates. C. A. 1888, c. 84, s. 46.

¹ 1877, No. 15, s. 29, part.

47. ¹ The Minister of Mines may at any time, if it is shown to him to be just so to do, renew or restore, on such terms as he may

think fit, any certificate which has been cancelled or suspended in pursuance of this Act. C. A. 1888, c. 84, s. 47.

¹ 1877, No. 15, s. 29, part.

48. ¹ Whenever any person proves to the satisfaction of the Minister of Mines that he has, without fault on his part, lost or been deprived of any certificate previously granted to him under this Act, such Minister of Mines shall, upon payment of such fee, if any, as he may direct, but not exceeding the fee specified in Schedule One to this Act, cause a copy of the certificate to which the applicant appears by the register to be entitled, to be made out and certified by the person who keeps the register, and delivered to the applicant; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate. C. A. 1888, c. 84, s. 48.

¹ 1877, No. 15, s. 30.

49. ¹ All expenses incurred by the Minister of Mines in carrying into effect the provisions of this Act with respect to certificates of competency or service shall be defrayed out of moneys provided by the Legislature. C. A. 1888, c. 84, s. 49.

¹ 1877, No. 15, s. 31, part.

50. ¹ All fees payable by the applicants for examination for or for a copy of a certificate under this Act shall be paid into the treasury and form part of the general revenue of the Province.¹ C. A. 1888, c. 84, s. 50.

¹ 1877, No. 15, s. 31.

RETURNS, NOTICES AND ABANDONMENTS.

51. ¹ On or before the first day of February in every year the owner, agent, or manager of every mine to which this Act applies shall send to the inspector of the district on behalf of the Minister of Mines a correct return, specifying, with respect to the year ending on the preceding thirty-first day of December, the quantity of coal wrought in such mine, and the number of persons ordinarily employed in or about such mine below ground and above ground, distinguishing the persons employed below ground and above ground, and the different classes and ages of the persons so employed whose hours of labour are regulated by this Act. C. A. 1888, c. 84, s. 51.

¹ 1877, No. 15, s. 33, part.

52. ¹ The return shall be in such form as may be from time to time prescribed by the Minister of Mines, and the inspector of the district on behalf of the Minister of Mines shall from time to time on application furnish forms for the purpose of such return. C. A. 1888, c. 84, s. 52.

¹ 1877, No. 15, s. 33, part.

53. ¹ The Minister of Mines may publish the aggregate results of such returns with respect to any particular inspector's district, or any large portion of an inspector's district, but the individual return shall not be published without the consent of the person making the same, or the owner of the mine to which they relate, and no person except an inspector or Minister of Mines shall be entitled, without such consent, to see the same. C. A. 1888, c. 84, s. 53.

¹ 1877, No. 15, s. 33, part.

54. ¹ Every owner, agent, or manager of a mine who fails to comply with the last three preceding sections, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 54.

¹ 1877, No. 15, s. 33, part.

55. ¹ Where in or about any mine to which this Act applies whether above or below ground either—

- (1) Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler; or
- (2) Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever, the owner, agent or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident, and the loss of life and personal injury occasioned thereby, to the inspector of the district on behalf of the Minister of Mines, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively. C. A. 1888, c. 84, s. 55.

¹ 1877, No. 15, s. 34, part.

56. ¹ Where any personal injury, of which notice is required to be sent under the last preceding section, results in the death of the per-

son injured, notice in writing of the death shall be sent to the inspector of the district on behalf of the Minister of Mines within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager. C. A. 1888, c. 84, s. 56.

¹ 1877, No. 15, s. 34, part.

57. ¹ Every owner, agent, or manager who fails to act in compliance with the last two preceding sections shall be guilty of an offence ² against this Act. C. A. 1888, c. 84, s. 57.

¹ 1877, No. 15, s. 34, part.

² *Underhill v. Longridge*, (1859) 29 L. J. M. C. 65.

58. ¹ In any of the following cases, namely,

- (1) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies;
- (2) Where a shaft of any mine to which this Act applies is abandoned or the working thereof is discontinued;
- (3) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months; or
- (4) Where any change occurs in the name of, or in the name of the owner, agent, or manager of, any mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies,

the owner, agent, or manager of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change; and if such notice is not given, the owner, agent, or manager shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 58.

¹ 1877, No. 15, s. 35.

59. ¹ Where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time ² such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of such mine, shall cause the top of the shaft and any side entrance from the surface, to be and to be kept securely fenced ³ for the prevention of accidents;—

Provided that—

(1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect.

(2) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section, he shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 59.

¹ 1877, No. 15, s. 36, part.

² R. v. Gratrex, (1876) 12 Cox C. C. 157; Stott v. Dickinson, (1876) 34 L. T. N. S. 291.

³ See Evans v. Lady Mostyn, etc., (1877) 2 C. P. D. 547.

60. ¹ Any shaft or side entrance which is not fenced as required by the last preceding section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unclosed land, shall be deemed to be a nuisance.¹ C. A. 1888, c. 84, s. 60.

¹ 1877, No. 15, s. 36, part.

61. ¹ Where any mine to which this Act applies is abandoned, the owner of such mine at the time of such abandonment shall, within three months after such abandonment, send to the Minister of Mines an accurate plan, on a scale of not less than two chains to one inch, or on such other scale as the plan used in the mine at the time of such abandonment is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with a view of its being preserved under the care of the Minister of Mines, but no person, except an inspector under this Act, shall be entitled, without the consent of the owner of the mine, to see such plan when so sent until after the lapse of ten years from the time of such abandonment. Every person who fails to comply with this section shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 61.

¹ 1877, No. 15, s. 37.

62. ¹ All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector may be either delivered personally or served and sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been

served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post. C. A. 1888, c. 84, s. 62.

¹ 1877, No. 15, s. 64.

INSPECTION.

63. ¹ The Minister of Mines may from time to time appoint any fit persons to be Inspectors of Mines to which this Act applies, and assign them their duties, and may reward them such remuneration as the Lieutenant-Governor in Council may approve, and may remove such inspectors. C. A. 1888, c. 84, s. 63.

¹ 1877, No. 15, s. 38, part.

64. ¹ Notice ² of the appointment of every such inspector shall be published in The British Columbia Gazette. C. A. 1888, c. 84, s. 64.

¹ 1877, No. 15, s. 38, part.

² R. v. The Spon Lane C. Co., (1878) 3 Q. B. D. 673.

65. ¹ Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of British Columbia with reference to which the term is used. C. A. 1888, c. 84, s. 65.

¹ 1877, No. 15, s. 38, part.

66. ¹ Any person who practises, or acts, or is a partner of any person who practises or acts as a land agent, or mining engineer, or as a manager, viewer, agent, or valuer of mines or arbitrator in any difference arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies or not) shall not act as an Inspector of Mines under this Act. C. A. 1888, c. 84, s. 66.

¹ 1877, No. 15, s. 39.

67. ¹ An inspector under this Act shall have power ² to do all or any of the following things, namely:—

- (1) To make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies;

- (2) To enter, inspect, and examine any mine to which this Act applies and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine.
- (3) To examine into and make enquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of a person employed in or about the mine, or any mine contiguous thereto.
- (4) To exercise such other powers as may be necessary for carrying this Act into effect;
- (5) The inspector shall visit every mine within his jurisdiction, and every working part thereof, and all travelling roads leading to and therefrom, and all air courses, at least once every month. C. A. 1888, c. 84, s. 67.

¹ 1877, No. 15, s. 40, part; 1888, c. 21, s. 1.

² Re Secretary of State and Fletcher, (1887) 18 Q. B. D. 339.

68. ¹ Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner, agent, and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act, in relation to such mine, shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 68.

¹ 1877, No. 15, s. 40, part.

69. ¹ If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner, agent, or manager of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied, the inspector shall also report the same to the Minister of Mines.

(2) ² The powers and duties of the inspector under this section shall also extend to the case of there being employed in a mine any person who by want of understanding, knowledge or skill, or owing to mental or physical incapacity or incompetency for the performance of the particular task or duty upon which he is engaged, or who from any cause is unable to clearly understand instructions conveyed to him, or is, or may be a source of danger to any other person in a mine in which such person is for the time being employed, or whose presence or employment in such mine exposes or may expose any person to the risk of bodily injury, and it shall be the duty of the Inspector of Mines on the application in writing of any three miners employed in such mine to examine any person or persons employed in such mine for the purpose of ascertaining whether any such want of understanding, knowledge, or skill, or any such mental, physical, or other incapacity or incompetency, or inability to understand instructions exists on the part of any person or persons so employed, and the employment in any mines of any person or persons in whom such want of understanding or skill, or such mental, physical or other incapacity or incompetency exists, or is found by the Inspector of Mines to exist, shall be deemed to be a matter, thing or practice in or connected with such mine and to be dangerous and defective within the meaning of this Act. C. A. 1888, c. 84, s. 69, and 1895, c. 38, s. 2.

¹ 1877. No. 15, s. 41, part.

² Enacted by 58 Vict., (1895) c. 38, s. 2 (assented to 21st February, 1895).

70. ¹ The Inspector of Mines shall give a decision on the matter as submitted to him within 21 days, and should he decide against the complaint of such miners the said three miners shall have a right to notify the owner, agent or manager of the mine of the matter complained of, and should he refuse or neglect to remedy such matter they may within 21 days after sending such notice to the owner, agent or manager, notify the Minister of Mines, and thereupon the matter shall be determined by arbitration in the manner provided by this Act, save and except that in such arbitration the parties to such arbitration shall be the owner, agent or manager of the mine on the one hand, and the complaining miners on the other. 1895, c. 38, s. 3.

¹ Added by 58 Vict., (1895) c. 38, s. 3.

71. Before any examination is held by the Inspector of Mines under this Act, the miners making application shall give security to the satisfaction of the said inspector to pay and recoup to the party

or parties examined the amount of wages he or they would have received had the application not been made, in the event that the said inspector shall find that the said party or parties so examined is or are a fit and proper person or persons to be employed in the mine. 1895, c. 38, s. 5.

72. No arbitration shall be held under this Act until the miners notifying the Minister of Mines shall have given security, to the satisfaction of the said Minister of Mines for the payment of all costs and expenses attendant upon the said arbitration should the arbitrators award costs against them, and also give security, to the satisfaction of the said Minister of Mines, to pay and recoup to the party or parties complained against the amount of wages he or they would have received had the arbitration not have been held, in the event that the award of the arbitrators shall be in favour of the party or parties complained against. 1895, c. 38, s. 6.

73. ¹ If the owner, agent, or manager of the mine object to remedy the matter complained of in the notice, he may, within 21 days after the receipt of such notice, send his objection in writing, stating the grounds thereof to the Minister of Mines; and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of such objection shall be deemed to be the date of the reference. C. A. 1888, c. 84, s. 70.

¹ 1877, No. 15, s. 41, part.

74. ¹ If the owner, agent, or manager fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection, or the time of making of the award (as the case may be), he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence;

Provided, that the Court, if satisfied that the owner, agent or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence, and if the works are completed within a reasonable time no penalty shall be inflicted. C. A. 1888, c. 84, s. 71.

¹ 1877, No. 15, s. 41, part.

75. ¹ No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of

sections 68, 73, and 74 of this Act, or be liable under any contract to any penalty or forfeiture for doing such acts; Provided that nothing in the said sections contained shall prevent any inspector from ordering the closing of any mine and the stopping of all work therein until the matter complained of is remedied, when in the opinion of such inspector any delay would be dangerous, and in such case he shall forthwith report to the Minister of Mines the fact of such stoppage and his reasons therefor. C. A. 1888, c. 84, s. 72.

¹ 1877, No. 15, s. 41, part.

76. ¹ The owner, agent, or manager of every mine to which this Act applies shall keep in the office at the mine an accurate plan of the workings of such mine, and showing the workings up to at least six months previously, and shall produce to an inspector under this Act at the mine such plan, and shall, if requested by the inspector, mark on such plan, the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same; but the inspector is not hereby authorized to make a copy of any part of such plan. C. A. 1888, c. 84, s. 73.

¹ 1877, No. 15, s. 42, part.

77. ¹ If the owner, agent, or manager of any mine to which this Act applies fails to keep such plan as is prescribed by the last preceding section, or wilfully refuses to produce, or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner, agent or manager to cause an accurate plan, such as is prescribed by the said section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than two chains to one inch, or on such other scale as the plan then used in the mine is constructed on. If the owner, agent, or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector to make or cause to be made such plan, he shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 74.

¹ 1877, No. 15, s. 42, part.

78. ¹ Every inspector under this Act shall make an annual report of his proceedings during the preceding year to the Minister of Mines, which report shall be laid before the Legislative Assembly. C. A. 1888, c. 84, s. 75.

¹ 1877, No. 15, s. 43, part.

79. ¹ The Minister of Mines may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient. C. A. 1888, c. 84, s. 76.

¹ 1877, No. 15, s. 43, part.

ARBITRATION.

80. ¹ With respect to arbitrations under this Act, except as modified by section 70, the following provisions shall have effect:—

- (1) The parties to the arbitration are in this section deemed to be the owner, agent, or manager of the mine on the one hand, and the Inspector of Mines (on behalf of the Minister of Mines) on the other;
- (2) Each of the parties to the arbitration may, within twenty-one days after the date of reference, appoint an arbitrator;
- (3) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of, or is interested in the mine to which the arbitration relates;
- (4) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party;
- (5) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section;
- (6) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final;

- (7) If before an award has been made any arbitrator appointed by either party die, or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in such case the award of such single arbitrator shall be final;
- (8) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made;
- (9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned;
- (10) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ;
- (11) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place;
- (12) If the arbitrators refuse or fail, or for seven days after the request of either party neglect to appoint an umpire, then, on the application of either party, an umpire shall be appointed by the Minister of Mines;
- (13) The decision of every umpire on the matters referred to him shall be final;
- (14) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

- (15) The arbitrators and their umpire, or any of them, may examine the parties and their witnesses on oath; they may also consult any counsel, engineer or scientific person whom they may think it expedient to consult;
- (16) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Minister of Mines, and, together with the costs of the arbitration and award, shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by the Registrar of the Supreme Court, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Minister of Mines shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner, agent or manager may, in the event of non-payment, be recovered in the same manner as penalties under this Act;
- (17) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer, or a person accustomed to the workings of mines, but when an award has been made under this section the arbitrator or umpire who made the same shall be deemed to have been duly qualified, as provided by this section. C. A. 1888, c. 84, s. 77, and 1895, c. 38, s. 4.

¹ 1877, No. 15, s. 44.

INQUESTS.

81. ¹ With respect to coroners' inquests on the bodies of persons whose deaths may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect:—

- (1) Where a coroner holds an inquest upon the body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest, unless the inspector, or some person on behalf of the Minister of Mines, is present to watch the proceedings;

(2) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the time and place of holding the adjourned inquest;

(3) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof;

(4) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest, in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn;

(5) An inspector or any other interested person shall be at liberty at any such inquest to examine any witness, subject, nevertheless, to the order of the coroner;

(6) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine, appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default;

(7) Any person having a personal interest in the management of the mine in which the explosion or accident occurred, and any person injured by such explosion or accident, or any relative of such person, shall not be qualified to serve on the jury empanelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 78.

¹ 1877, No. 15, s. 45.

PART II.

RULES.

82. ¹ The following general rules shall be observed, so far as is reasonably practicable,² in every mine to which this Act applies:—

¹ 1877, No. 15, s. 46; 1888, c. 21, s. 2.

² *Wales v. Thomas*, (1885) 16 Q. B. D. 340.

Rule 1.—An adequate amount of ventilation¹ shall be constantly produced in every mine, to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.

¹ *Knowles v. Dickinson*, (1860) 2 E. & E. 705; *Brough v. Homfray*, (1860) L. R. 3 Q. B. 771; *Hall v. Hopwood*, (1879) 49 L. J. M. C. 17.

Rule 2.—An adequate amount of ventilation shall mean not less than one hundred cubic feet of pure air per minute for each man, boy, horse and mule employed in a mine, and as much more as the inspector may direct, which shall sweep the face of each working place. Every mine shall be divided into districts or splits of not more than seventy men in each district, and each district shall be supplied with a separate current of fresh air. All intake air shall travel free from all stagnant water, stables, and old workings, and every place shall be bratticed up within four yards of the face. On all main roads where a door is required the Inspector of Mines may order that two doors shall be placed so that while boxes are being taken through the one, the other shall remain closed, and no air shall be lost.

Rule 3.—In every mine in which inflammable gas has been found within the preceding twelve months, then once in every twenty-four hours if one shift of workmen is employed, and once in every twelve hours if two shifts are employed during any twenty-four hours, a competent person or competent persons, who shall be appointed for the purpose, shall, before the time for commencing work in any part of the mine, inspect with a safety lamp that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof, so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every such report shall be

recorded without delay in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

Rule 4.—In every mine in which inflammable gas has not been found within the preceding twelve months, then once in every twenty-four hours a competent person or competent persons, who shall be appointed for the purpose, shall, so far as is reasonably practicable, immediately before the time for commencing work in any part of the mine, inspect that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof, so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every report shall be recorded without delay in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.¹

¹ *Scott v. Bould*, (1895) 1 Q. B. 9.

Rule 5.—All entrances to any place not in actual course of working and extension shall be properly fenced across the whole width of such entrance, so as to prevent persons inadvertently entering the same.

Rule 6.—A station or stations shall be appointed at the entrance to the mine, or to different parts¹ of the mine, as the case may require, and a workman shall not pass beyond any such station until the mine or part of the mine beyond the same has been inspected and stated to be safe.

¹ *Wales v. Thomas*, (1885) 16 Q. B. D. 348.

Rule 7.—If at any time it is found by the person for the time being in charge of the mine, or any part thereof, that by reason of noxious gases prevailing in such mine or such part thereof, or of any cause whatever, the mine or the said part is dangerous,¹ every workman shall be withdrawn from the mine or such part thereof as is so found dangerous, and a competent person, who shall be appointed for the purpose, shall inspect the mine or such part thereof as is so found dangerous, and if the danger arises from inflammable gas shall inspect the same with a locked safety lamp, and in every case shall make a true report of the condition of such mine or part thereof, and a workman shall not, except in so far as is necessary for enquiring into the cause of danger or for the removal thereof, or for exploration, be re-admitted into the mine, or such part thereof as was so found dangerous, until the same is stated by such report not to be

dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

¹ *R. v. Spon Lane C. Co.*, (1878) 3 Q. B. D. 673.

Rule 8.—In every working approaching any place where there is likely to be an accumulation of explosive gas, no lamp or light other than a locked safety lamp shall be allowed or used, and whenever safety lamps are required by this Act, or by the special rules made in pursuance of this Act to be used, a competent person, who shall be appointed for the purpose, shall examine every safety lamp immediately before it is taken into the workings for use, and ascertain it to be secure and securely locked; and in any part of a mine in which safety lamps are so required to be used, they shall not be used until they have been so examined and found secure and securely locked, and shall not without due authority be unlocked, and in the said part of a mine a person shall not, unless he is appointed for the purpose, have in his possession any key or contrivance for opening the lock of any such safety lamp, or any lucifer match or apparatus of any kind for striking a light. Where it is necessary to work coal in any part of a ventilating district with safety lamps, it shall not be allowable to work with a naked light in another part of the same ventilating district situated between the place where such safety lamps are being used and the return airway.

Rule 9.—Gunpowder or other explosive or inflammable substance shall only be used in the mine underground as follows:

- (a) It shall not be stored in the mine;
- (b) It shall not be taken into the mine, except in a case or canister containing not more than four pounds;
- (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters;
- (d) In charging holes for blasting, an iron or steel pricker shall not be used, and the person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder;

- (e) No explosive shall be forcibly pressed into a hole of insufficient size, and when a hole has been charged the explosive shall not be unrammed, and no hole shall be bored for a charge at a distance of less than two feet from any hole where the charge has missed fire; but where a space of two feet from the first hole cannot be obtained, the explosive may be unrammed under the sanction and supervision of the shot examiner;
- (f) It shall not be taken into or be in the possession of any person in any mine, except in cartridges, and shall not be used, except in accordance with the following regulations, during three months after any inflammable gas has been found in any such mine, namely,
 - (1) A competent person, who shall be appointed for the purpose, shall, immediately before firing the shot, examine the place where it is to be used, and all places contiguous thereto within a radius of twenty-five yards, and shall not allow the shot to be fired unless he finds it safe to do so, and a shot shall not be fired except by or under the direction of a competent person, who shall be appointed for the purpose;
 - (1a) If the place where the shot is to be fired is dry and dusty, then the shot shall not be fired unless one of the following conditions is observed, that is to say,
 - (1b) Unless the place of firing and all contiguous and accessible places within a radius of twenty yards are at the time of firing in a wet state from a thorough watering or other treatment equivalent to watering in all parts where dust is lodged, whether roof, floor or sides, or,
 - (1c) In the case of places in which watering would injure the roof or floor, unless the explosive is so used with water, or other contrivance as to prevent it from inflaming gas or dust, or is of such a nature that it cannot inflame gas or dust;
 - (1d) All hauling or other roads that are dry and dusty shall be watered sufficiently often to allay the dust.

- (2) If the said inflammable gas issued so freely that it showed a blue cap on the flame of the safety lamp, it shall only be used,
- (a) Either in those cases of stone drifts, stone work, and sinking of shafts, in which the ventilation is so managed that the return air from the place where the powder is used passes into the main return air course without passing any place in actual course of working; or,
- (b) When the persons ordinarily employed in the mine are out of the mine, or out of the part of the mine where it is used;
- (g) Where a mine is divided into separate panels in such manner that each panel has an independent intake and return airway from the main air course and the main return air course, provisions of this rule with respect to gunpowder or other explosive inflammable substance shall apply to each such panel in like manner as if it were a separate mine.

Rule 10.—Where a place is likely to contain a dangerous accumulation of water, the working approaching such place shall not exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards in advance, at least one bore-hole near the centre of the working, and sufficient flank bore-holes on each side.

Rule 11.—Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass, or gin, shall be provided, if exceeding thirty yards in length, with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, of intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

Rule 12.—Every road on which persons travel underground, where the load is drawn by a horse or other animal, shall be provided, at intervals of not more than fifty yards, with sufficient man-holes, or with a space for a place of refuge, which space shall be of sufficient length, and of at least three feet in width, between the waggons running on the tram-road and the side of such road.

Rule 13.—Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

Rule 14.—The top of every shaft, which for the time being is out of use, or used only as an air-shaft, shall be securely fenced.

Rule 15.—The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purposes of repairs or other operations, if proper precautions are used.

Rule 16.—Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined or otherwise made secure.

Rule 17.—The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure.

Rule 18.—Where there is a downcast and furnace shaft, and both such shafts are provided with apparatus in use for raising and lowering persons, every person employed in the mine shall, upon giving reasonable notice, have the option of using the downcast shaft.

Rule 19.—In any mine which is usually entered by means of machinery, a competent person of such age as prescribed by this Act, shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for the said purpose during the whole time that any person is below ground in the mine.

Rule 20.—Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft, and to every entrance for the time being in work between the surface and the bottom of the shaft.

Rule 21.—A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump, or some work of repair in the shaft, or where a written exemption is given by the inspector of the district.

Rule 22.—A single linked chain shall not be used for lowering or raising persons in any working shaft or plane, except for the short coupling chain attached to the cage or load.

Rule 23.—There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping.

Rule 24.—There shall be attached to every machine worked by steam, water, or mechanical power, and used for lowering and raising persons, an adequate brake, and also a proper indicator, in addition to any mark on the rope, which shows to the person who works the machine the position of the cage or load in the shaft.

Rule 25.—Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

Rule 26.—Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

Rule 27.—After dangerous gas has been found in any mine, a barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

Rule 28.—No person shall wilfully damage, or without proper authority remove or render useless any fence, fencing, casing, lining, guide, means of signalling, signal, cover, change, flange, horn, brake, indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Rule 29.—Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Act or the special rules.

Rule 30.—A competent person or competent persons who shall be appointed for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, and the state of the head gear, working places, levels, planes, ropes, chains, and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein, and shall make a true report of the result of such examination, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same.

Rule 31.—The persons employed in a mine may from time to time appoint one or two of their number to inspect the mine at their own cost, and the persons so appointed shall be allowed once or oftener in every shift, day, week, or month, accompanied, if the owner, agent, or manager of the mine thinks fit, by himself or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings, and machinery, and shall be afforded by the owner, agent and manager, and all persons in the mine, every facility for the purpose of such inspection, and shall make a true report of the result of such inspection, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same. And if the report state the existence or apprehended existence of any danger, the owner, agent, or manager shall forthwith cause a true copy of the report to be sent to the inspector of the district.

Rule 32.—The books mentioned in this section, or a copy thereof, shall be kept at the office of the mine, and any inspector under this Act, and any person employed in the mine, may, at all reasonable times, inspect, and take copies of and extracts from any such books.

Rule 33.—Every cage used in any mine shall be stationary, and shall rest upon chains or catches before any person is allowed to enter upon or to leave the same. No person shall enter or leave a cage without the consent of the banksman or onsetter.

Rule 34.—No Chinaman or person unable to speak English shall be appointed to or shall occupy any position of trust or responsibility in or about a mine subject to this Act, whereby, through his ignorance, carelessness, or negligence, he might endanger the life or limb

of any person employed in or about a mine, viz., as banksman, on-setter, signalman, brakesman, pointsman, furnaceman, engineer, or be employed at the windlass of a sinking pit.

Rule 35.—Every person¹ who contravenes or does not comply with any of the general rules of this section shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, the owner, agent and manager² shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance. C. A. 1888, c. 84, s. 79.

¹ Frecheville v. Souden, (1883) 48 L. T. N. S. 612.

² R. v. Brown, (1857) 7 E. & B. 757; Baker v. Carter, (1878) 3 Ex. D. 132; Wynne v. Forester, (1879) 5 C. P. D. 361; Dickenson v. Fletcher, (1873) L. R. 9 C. P. 1; Howells v. Wynne, (1863) 15 C. B. N. S. 3; Baddeley v. Earl Granville, (1887) 19 Q. B. D. 423.

83. ¹ There shall be established in every mine to which this Act applies such rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed in and about every such mine, in the same manner as if they were enacted in this Act. C. A. 1888, c. 84, s. 80.

¹ 1877, No. 15, s. 47, part.

84. If any person² who is bound to observe the special rules established for any mine acts³ in contravention of, or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner, agent, and manager⁴ of such mine, unless he proves that he had taken all reasonable means,⁵ by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine so as to prevent such contravention or non-compliance, shall each be guilty of an offence against this Act. C. A. 1888, c. 84, s. 81.

² Higginson v. Hapley, (1869) 19 L. T. N. S. 690.

³ Higham v. Wright, (1877) 2 C. P. D. 401.

⁴ *R. v. Brown*, (1857) 7 E. & B. 757; *Baker v. Carter*, (1878) 3 Ex. D. 132; *Wynne v. Forrester*, (1879) 5 C. P. D. 361; *Howells v. Wynne*, (1863) 15 C. B. N. S. 3.

⁵ *Stokes v. Checkland*, (1893) 9 T. L. R. 235; *Baker v. Carter*, (1878) 3 Ex. D. 135; *Hall v. Hopwood*, (1879) 49 L. J. M. C. 17.

85. ¹ The owner, agent, or manager of every mine to which this Act applies shall frame and transmit to the inspector of the district, for approval by the Minister of Mines, special rules for such mine within three months after the commencement of any working for the purpose of opening a new mine or renewing an old mine. C. A. 1888, c. 84, s. 82.

¹ 1877, No. 15, s. 48, part.

86. ¹ The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom, may be sent by any of the persons employed in the mine to the inspector of the district, at his address stated in such notice, shall, during not less than two weeks before such rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall be sent to the inspector with the rules, signed by the person sending the same. C. A. 1888, c. 84, s. 83.

¹ 1877, No. 15, s. 48, part.

87. ¹ If the rules are not objected to by the Minister of Mines within forty days after their receipt by the inspector, they shall be established. C. A. 1888, c. 84, s. 84.

¹ 1877, No. 15, s. 49, part.

88. ¹ If the Minister of Mines is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or are not in accordance with the spirit of this Act, or for the safety of the persons employed in or about the mine, or are unreasonable, he may within forty days after the rules are received by the inspector, object to the rules, and propose to the owner, agent, or manager in writing any modifications in the rules by way either of omission, alteration, substitution, or addition. C. A. 1888, c. 84, s. 86.

¹ 1877, No. 15, s. 49, part.

89. ¹ If the owner, agent, or manager does not, within twenty days after the modifications proposed by the Minister of Mines are

received by him, object in writing to them, the proposed special rules, with such modifications, shall be established. C. A. 1888, c. 84, s. 86.

¹ 1877, No. 15, s. 50, part.

90. ¹ If the owner, agent, or manager sends his objection in writing within the said twenty days to the Minister of Mines, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Minister of Mines shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration. C. A. 1888, c. 84, s. 87.

¹ 1877, No. 15, s. 50, part.

91. ¹ After special rules are established under this Act in any mine, the owner, agent, or manager of such mine may from time to time propose in writing to the inspector of the district, for the approval of the Minister of Mines, any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules. C. A. 1888, c. 84, s. 88.

¹ 1877, No. 15, s. 50, part.

92. ¹ The Minister of Mines may from time to time propose in writing to the owner, agent or manager of the mine any new special rules, or any amendment to the special rules, and the provisions of this Act with respect to a proposal of the Minister of Mines for modifying the special rules transmitted by the owner, agent, or manager of a mine shall apply to all such new special rules and amendments in like manner, as near as may be, as they apply to such proposal. C. A. 1888, c. 84, s. 89.

¹ 1877, No. 15, s. 50, part.

93. ¹ If the owner, agent, or manager of any mine to which this Act applies make any false statement with respect to the posting up of the rules and notices, he shall be guilty of an offence against this Act, and if special rules for any mine are not transmitted within the time limited by this Act to the inspector for the approval of the Minister of Mines, the owner, agent, and manager of such mine shall be guilty of an offence against this Act, unless he prove that he had taken all reasonable means, by enforcing to the best of his power the provisions of this section, to secure the transmission of such rules. C. A. 1888, c. 84, s. 90.

¹ 1877, No. 15, s. 51.

94. ¹ For the purpose of making known² the special rules and provisions of this Act to all persons employed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner, agent, or manager of the mine, by the inspector of the district on behalf of the Minister of Mines, and an entire copy of the special rules shall be published as follows:—

- (1) The owner, agent, or manager of such mine shall cause such abstract and rules, with the name and address of the inspector of the district, and the name of the owner or agent and of the manager appended thereto, to be posted up in a legible character in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch;
- (2) The owner, agent, or manager shall supply a printed copy of the abstract and the special rules gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner, agent, or manager are paid;
- (3) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

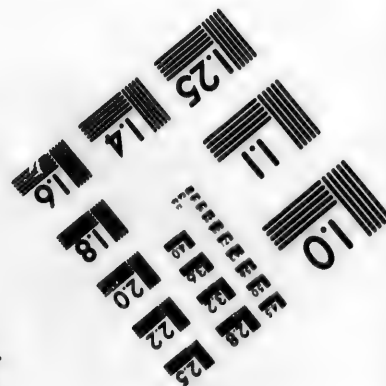
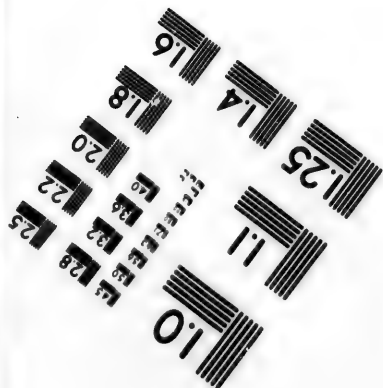
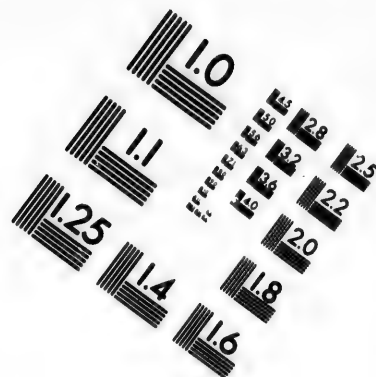
In the event of any non-compliance with the provisions of this section by any persons whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, but the owner, agent, or manager of such mine shall not be deemed guilty if he prove that he had taken all reasonable means, by enforcing to the best of his power the observance of this section to prevent such non-compliance. C. A. 1888, c. 84, s. 91.

¹ 1877, No. 15, s. 52.

² *Higginson v. Hapley*, (1869) 19 L. T. N. S. 690.

95. ¹ Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act. C. A. 1888, c. 84, s. 92.

¹ 1877, No. 15, s. 53.



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96. ¹ An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act, and have been signed by the inspector. C. A. 1888, c. 84, s. 93.

¹ 1877, No. 15, s. 54.

PART III.

SUPPLEMENTAL.

Penalties.

97. ¹ Every person employed in or about a mine, other than an owner, agent, or manager, who is guilty of any act or omission which in the case of an owner, agent, or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act. C. A. 1888, c. 84, s. 94.

¹ 1877, No. 15, s. 55, part.

98. ¹ Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner, agent, or manager, one hundred dollars, and if he is any other person, ten dollars, for each offence; and if the inspector has given written notice of any such offence, then, in case of an owner, agent, or manager, to a further penalty not exceeding one hundred dollars and not less than ten dollars for every day after such notice that such offence continues to be committed; and in cases of other persons, to a further penalty not exceeding five dollars for every day after such notice that such offence continues to be committed. C. A. 1888, c. 84, s. 95.

¹ 1877, No. 15, s. 55, part.

99. ¹ Where a person who is an owner, agent, or manager of or a person employed in or about a mine is guilty of an offence against this Act, which in the opinion of the Court that tries the case is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any such persons, or to cause a dangerous accident, and was committed wilfully by the person, or by the personal act, personal default, or personal negligence of the person accused, such person shall be liable,

if the Court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months. C. A. 1888, c. 84, s. 96.

¹ 1877, No. 15, s. 56, part.

100. ¹ If any person feel aggrieved by any conviction made by a Court of Summary Jurisdiction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of the last preceding section, or by which conviction the sum adjudged to be paid amounts to or exceeds the half maximum penalty, the person so aggrieved may appeal therefrom. C. A. 1888, c. 84, s. 97.

¹ 1877, No. 15, s. 56, part.

101. ¹ All offences under this Act, and all penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in a summary manner before a justice of the peace. C. A. 1888, c. 84, s. 98.

¹ 1877, No. 15, s. 57, part.

102. ¹ The following provisions shall have effect:—

- (1) ² Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose;
- (2) The description of any offence under this Act in the words of this Act, shall be sufficient in law;
- (3) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant;
- (4) The owner, agent, or manager may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person;

- (5) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved;
- (6) Any two justices of the peace holding a Court of Summary Jurisdiction shall not impose a penalty under this Act exceeding two hundred and fifty dollars, but any such Court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount. C. A. 1888, c. 84, s. 99.

¹ 1877, No. 15, s. 58.

² *R. v. Mainwaring*, (1858) E. B. & E. 474.

103. ¹ No prosecution shall be instituted against the owner, agent, or manager of a mine to which this Act applies for any offence under this Act which can be prosecuted before a Court of Summary Jurisdiction, except by an inspector or with the consent in writing of the Minister of Mines; and in the case of any offence of which the owner, agent, or manager of a mine is not alleged to be personally the perpetrator, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, or manager, if satisfied that he had taken such reasonable means as aforesaid. C. A. 1888, c. 84, s. 100.

¹ 1877, No. 15, s. 59.

104. ¹ Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence. And if the Court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act, or otherwise, the Court may adjourn the case to enable such proceedings to be taken. C. A. 1888, c. 84, s. 101.

¹ 1877, No. 15, s. 60, part.

² *Foster v. Fyfe*, (1896) 2 Q. B. 104.

105. ¹ A person who is the owner, agent, or manager, of any mine to which this Act applies, or the father, son, or brother of such owner, agent or manager, shall not act as a Court or member of a Court of Summary Jurisdiction in respect of any offence under this Act. C. A. 1888, c. 84, s. 102.

¹ 1877, No. 15, s. 61.

106. ¹ Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident, or for any offence

against this Act which has occasioned loss of life or personal injury, the Minister of Mines may (if he think fit) direct such penalty to be paid to or distributed among the persons injured and the relatives of any person whose death may have been occasioned by such explosion, accident, or offence, or among some of them. Provided that:—

- (1) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence;
- (2) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident or offence.

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the Provincial Treasury. C. A. 1888, c. 84, s. 103.

¹ 1877, No. 15, ss. 61, 62.

107. ¹ The owner, occupier, or manager of every mine shall on the first of January every year, and at any other time when required by the Minister of Mines, send to the inspector of his district a return of facts relating to his mine in the form given in schedule three. C. A. 1888, c. 84, s. 104.

¹ 1877, No. 15, s. 63.

SCHEDULE ONE.¹

TABLE OF MAXIMUM FEES TO BE PAID IN RESPECT OF CERTIFICATES OF MANAGERS OF MINES.

By an applicant for examination	\$10 00
By applicant for certificate of service for registration.....	10 00
For copy of certificate	5 00

C. A. 1888, c. 84, Sch. 1.

¹ 1877, No. 15 Sch. 1.

SCHEDULE TWO.¹

PROCEEDINGS OF BOARD FOR EXAMINATIONS.

1. The board shall meet for the dispatch of business, and shall from time to time make such regulations with respect to the sum-

moning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—

- (a) The first meeting shall be summoned by the inspector of the district, and shall be held on such day as may be fixed by the Minister of Mines;
- (b) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the chairman;
- (c) The quorum to be fixed by the board shall consist of not less than three members;
- (d) Every question shall be decided by a majority of votes of the members present and voting on that question;
- (e) The names of the members present, as well as those voting upon each question, shall be recorded;
- (f) No business shall be transacted unless notice in writing of such business has been sent to every member of the board¹ seven days at least before the meeting.

2. The board shall from time to time appoint some person to be chairman, and one other person to be vice-chairman.

3. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be chairman of such meeting.

4. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

5. The appointment of an examiner may be made by a minute of the board signed by the chairman.

6. The board shall keep minutes of their proceedings, which may be inspected or copied by the Minister of Mines, or any person authorized by him to inspect or copy the same.¹ C. A. 1888, c. 84, Sch. 2.

¹ 1877, No. 15, Sch. 2.

CHAPTER XIX.

MINES AND MINERALS IN LANDS BELONGING TO, OR ADMINISTERED BY, THE DOMINION OF CANADA, INCLUDING INDIAN LANDS.

I. As to Minerals other than Coal :

	PAGE
1. Pursuant to "The Dominion Lands Act" (R. S. C. (1886) cap. 54, ss. 47, 48, 49; 46 Vict. (D.), (1883), cap. 17)	692

Regulations thereunder :

(1) For the disposal of Quartz Mining Claims (11th March, 1898)	693
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2. Pursuant to "The Indian Act" (R. S. C. (1886) cap. 43; 43 Vict. (D.), (1880) cap. 28)	759

Regulations thereunder :

(9) Indian Lands Consolidated Mining Regulations (15th September, 1888, as amended 2nd December 1889, 15th June, 1893)	760
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II. As to Coal Lands:**1. Pursuant to "The Dominion Lands Act" (*supra*).***Regulations thereunder:*

- (1) For the disposal of Coal Lands, the property of the Dominion, in Manitoba, the North-West Territories, and British Columbia (17th September, 1889, 19th July, 1892, 11th November, 1895)..... 780
- (2) For the issue of permits to mine Coal on Dominion Lands for domestic purposes only (9th February, 1897)..... 785

2. Pursuant to "The Indian Act" (*supra*).*Regulations thereunder:*

- (3) Respecting Coal Lands within the Indian Reserves in Manitoba and the North-West Territories (15th September, 1888)..... 788

"THE DOMINION LANDS ACT." ¹(Part).

MINING AND MINING LAWS.

47. Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead entry, but shall be disposed of in such manner and on such terms and conditions as are, from time to time, fixed by the Governor in Council, by regulations made in that behalf. 46 Vict. c. 17, s. 42.

48. No grant from the Crown of lands in freehold or for any less estate, shall be deemed to have conveyed or to convey the gold or silver mines therein, unless the same are expressly conveyed in such grant. 46 Vict. c. 17, s. 43.

49. Every discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of the Act passed in the forty-third year of Her Majesty's reign, chapter twenty-six, shall be held to have the same rights as if that Act had not been passed. 46 Vict. c. 17, s. 44.

¹ R. S. C. (1886) c. 54.

QUARTZ MINING REGULATIONS.

For the Disposal of Quartz Mining Claims on Dominion Lands in Manitoba and the North-West Territories (including the Provisional District of Yukon). Approved by Order in Council, dated 21st March, 1898.

1. These regulations shall be applicable to all Dominion lands, with the exception of those situated in the Province of British Columbia, and with the exception of lands containing coal.

INTERPRETATION.

2. In the construction of these regulations the following expressions shall have the following meanings respectively, unless inconsistent with the context:—

“Minister” shall mean the Minister of the Interior.

“Mining Recorder” shall mean the agent of Dominion Lands for a district, or other officer appointed by the Government or Gold Commissioner for the particular purpose referred to.

“Mine” shall mean any land in which any vein or lode, or rock in place, shall be mined for gold or other minerals, precious or base, except coal.

“Mineral” shall mean all valuable deposits of gold, silver, platinum, iridium, or any of the platinum group of metals, mercury, lead, copper, iron, tin, zinc, nickel, aluminum, antimony, arsenic, barium, bismuth, boron, bromine, cadmium, chromium, cobalt, iodine, magnesium, manganese, molybdenum, phosphorus, plumbago, potassium, sodium, strontium, sulphur (or any combination of the aforementioned elements, with themselves or with any other elements), asbestos, emery, mica, and mineral pigments.

Limestone, marble, clay, or any building stone when mined for building purposes, shall not be considered as mineral within the meaning of these regulations.

“Rock in place” shall mean all rock in place bearing valuable deposits of mineral within the meaning of these regulations.

“Vein” or “lode.” Whenever either of these terms is used in these regulations “rock in place” shall be deemed to be included.

"Mineral claim" shall mean the personal right of property or interest in any mine.

"Mining property" shall include every mineral claim, ditch, mill-site, or water right used for mining purposes, and all other things belonging to a mine or used in the working thereof.

"Legal post" shall mean a wooden stake standing not less than four feet above the ground, and squared or faced on four sides for at least one foot from the top, and each side so squared or faced shall measure at least four inches on its face so far as squared or faced, and any stump or tree cut off and squared or faced to the above height and size: Provided where the survey is made, the centre of the tree or stump where it enters the ground shall be taken as the point to or from which measurement shall be made.

"Mill-site" shall mean a plot of ground located, as defined by these regulations for the purpose of erecting thereon any machinery or other works for transporting, crushing, reducing, or sampling ores, or for the transmission of power for working mines.

"Streams" shall include all natural water courses, whether usually containing water or not, and all rivers, creeks, and gulches.

"Ditch" shall include a flume, pipe or race, or other artificial means for conducting water by its own weight, to be used for mining purposes.

"Ditch-head" shall mean the point in a natural water-course or lake, or other source where water is first taken into a ditch.

"Free miner" shall mean a person or joint stock company, named in and lawfully possessed of a valid existing free miner's certificate, and no other.

"Record," "Register," and "Registration," shall have the same meaning, and shall mean an entry in some official book kept for that purpose.

"Full interest" shall mean any mineral claim of the full size, or one of several shares into which a mineral claim shall be equally divided.

"Cause" shall include any suit or action.

"Judgment" shall include "order" or "decree."

"Real estate" shall mean any mineral land in fee simple under these regulations, or any Act relating to gold mines, or to minerals other than coal.

"Joint Stock Company" shall mean any company duly incorporated for mining purposes under a Canadian charter, or licensed by the Government of Canada.

PART I.

FREE MINERS AND THEIR PRIVILEGES.

3. Every person eighteen years of age and over, but not under, and every joint stock company shall be entitled to all the rights and privileges of a free miner, under these regulations, and under the regulations governing placer mining or any other regulations of the Government of Canada, and shall be considered a free miner, upon taking out a free miner's certificate. A free miner's certificate issued to a joint stock company shall be issued in its corporate name. A free miner's certificate shall not be transferable.

4. A free miner's certificate may be granted for one year to run from the date thereof, or from the expiration of the applicant's then existing certificate, upon the payment therefor of the fees set out in the schedule of fees to these regulations. Only one person or one joint stock company shall be named therein.

5. A free miner's certificate shall be in the following form:—

DOMINION OF CANADA.

FREE MINER'S CERTIFICATE.

(Not Transferable.)

No. .

Date

Valid for One Year Only.

This is to certify that of , has paid me this day the sum of , and is entitled to all the rights and privileges of a free miner under, any mining regulations of the Government of Canada, for one year from the day of , 18 .

This certificate shall also grant to the holder thereof the privilege of fishing and shooting, subject to the provisions of any Act which has been passed or which may hereafter be passed, for the protection of game and fish; also the privilege of cutting timber for actual necessities, for building houses, boats, and for general mining operations, such timber, however, to be for the exclusive use of the

miner himself, but such permission shall not extend to timber which may have been heretofore, or which may hereafter be granted to other persons or corporations.

6. Any free miner shall at any time be entitled to obtain a free miner's certificate, commencing to run at the expiration of his then existing free miner's certificate, provided that when he applies for such certificate he shall produce to the Mining Recorder such existing certificate.

7. Free miners' certificates may be obtained by applicants in person at the Department of the Interior, Ottawa, or from the agents of Dominion Lands at Winnipeg, Manitoba, Calgar, Edmonton, Prince Albert, in the North-West Territories, Kamloops and New Westminster, in the Province of British Columbia, at Dawson City, in the Yukon district; also from agents of the Government at Vancouver and Victoria, B.C.; and at other places which may from time to time be named by the Minister of the Interior.

8. If any free miner's certificate be accidentally destroyed or lost, the owner thereof may, on payment of the fees set out in the schedule to these regulations have a true copy of it, signed by the Mining Recorder or other person by whom or out of whose office the original was issued. Every such copy shall be marked "Substituted certificate," and unless some material irregularity be shown in respect thereof, every original or substituted free miner's certificate shall be evidence of all matters therein contained.

9. Subject to the proviso hereinafter stated, no person or joint stock company shall be recognized as having any right or interest in or to any mineral claim, or to any minerals therein, or in or to any water right, mining ditch, drain, tunnel, or flume, unless he or it and every person in his or its employment, shall have a free miner's certificate unexpired. And on the expiration of a free miner's certificate the owner thereof shall absolutely forfeit all his rights and interests in or to any mineral claim, and all and any minerals therein, and in or to any and every water right, mining ditch, drain, tunnel, or flume, which may be held or claimed by such owner of such expired free miner's certificate unless such owner shall, on or before the day following the expiration of such certificate, obtain a new free miner's certificate. Provided nevertheless, should any co-owner fail to keep up his free miner's certificate, such failure shall not cause

a forfeiture or act as an abandonment of the claim, but the interest of the co-owner who shall fail to keep up his free miner's certificate shall *ipso facto*, be and become vested in his co-owners *pro rata* according to their former interests. Provided, nevertheless, that a shareholder in a joint stock company need not be a free miner, and though not a free miner, shall be entitled to buy, sell, hold, or dispose of any shares therein. And provided, also, that this section shall not apply to mineral claims for which a Crown grant has been issued. Provided, always, that if any person or company shall acquire, by purchase or otherwise, any mine or mineral claim, or interest therein, and it shall appear that some person or company through whom he or it claims title has neglected to take out or keep up a free miner's certificate, according to the provisions of these regulations, such person or company so acquiring such mine or mineral claim, or interest therein, may, within one month from the time when he or it shall first acquire knowledge thereof, pay to the Mining Recorder in which the claim affected is situate the fee or fees which ought to have been paid by such person or company in default as aforesaid, and thereupon the title of such person or company so acquiring the said mine or mineral claim, or interest therein, shall be deemed to be and always to have been as good and effectual as if no such default had occurred.

10. Every free miner shall, during the continuance of his certificate, but no longer, have the right personally, but not through another, to enter, locate, prospect, and mine upon any vacant Dominion lands for all minerals other than coal, and upon all lands the right whereon to so enter, prospect and mine all minerals other than coal has been, or hereafter shall be reserved to the Crown, and also to enter, locate, prospect and mine for gold and silver upon any lands the right whereon to so enter and mine such gold and silver has been, or shall be, reserved to the Crown. Excepting out of all the above descriptions of lands, all the Dominion lands situated in the Province of British Columbia, and excepting also any land occupied by any building, and any land falling within the curtilage of any dwelling house, and any orchard, and any land for the time being actually under cultivation, unless with the written consent of the owner, lessee or locatee or of the person in whom the legal estate therein is vested, and any land on which is situated any church or cemetery, and any land lawfully occupied for mining purposes and also Indian reserves, and military or naval reservations. Provided that in the event of such entry being made upon lands already law-

fully occupied, such free miner shall give adequate security to the satisfaction of the Mining Recorder for any loss or damage which may be caused by such entry if requested by the owner or occupant of such land, and should he refuse to give such security when so requested, his right to such claim or mine shall cease and determine. Provided that, after such entry, he shall make full compensation to the occupant or owner of such lands for any loss or damage which may be caused by reason of such entry, if demanded to do so by such occupant or owner, such compensation in case of dispute to be determined by the Court of competent jurisdiction with or without a jury.

11. Any free miner desiring to locate a mineral claim shall, subject to the provisions of these regulations with respect to land which may be used for mining, and having discovered mineral in place within the area proposed to be located as a claim by him, enter upon the same and locate a plot of ground not exceeding 1,500 feet in length by 1,500 feet in breadth. All angles shall be right angles except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the boundaries need not necessarily be due north, south, east and west lines. In defining the size of a mineral claim it shall be measured horizontally irrespective of inequalities of the surface of the ground.

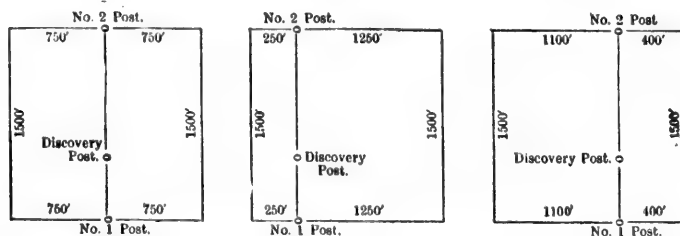
12. A mineral claim shall be marked by two legal posts placed as near as possible on the line of the lode or vein, and the posts shall be numbered 1 and 2. The distance between posts 1 and 2 shall not exceed 1,500 feet, and upon the posts shall be written the name given to the mineral claim, the Christian name and surname of the locator, and the date of the location. Upon post numbered 1 there shall be written, in addition to the foregoing, "initial post," the approximate compass bearing to post numbered 2, and a statement of the number of feet lying to the right and to the left of the line from post 1 to post 2, thus: Initial post, direction of post No. 2, feet of this claim lie to the right, and feet to the left of the line from post No. 1 to post No. 2.

13. All the particulars required to be put on No. 1 and No. 2 posts shall be furnished by the locator to the Mining Recorder in writing, at the time the claim is recorded, and shall form a part of the record of such claim.

14. When a claim has been located the holder shall immediately mark the line between posts Nos. 1 and 2 so that it can be distinctly seen; in a timbered locality, by blazing trees and cutting underbrush, and in a locality where there is neither timber nor underbrush he shall set legal posts or erect monuments of earth or rock not less than two feet high and two feet in diameter at base, so that such line can be distinctly seen.

15. The locator shall also place a legal post at the point where he has discovered mineral in place, on which shall be marked "Discovery Post."

Examples of Various Modes of Laying Out Claims.



16. It shall not be lawful to move No. 1 post, but No. 2 post may be moved by the Dominion Land Surveyor when the distance between Nos. 1 and 2 posts exceeds 1,500 feet in order to place No. 2 post 1,500 feet from No. 1 post on the line of location. When the distance between posts Nos. 1 and 2 is less than 1,500 feet, the Dominion Land Surveyor has no authority to extend the claim beyond No. 2.

The "location line" shall govern the direction of one side of the claim, upon which the survey of the claim shall be extended.

17. It shall not be lawful for any person to move any location post or to deface or to alter in any manner the notices on the same.

18. Any person removing or disturbing, with intent to remove, any legal post, stake, picket or other mark placed under the provisions of these regulations, or defacing or altering in any manner the notices on any of the legal posts placed thereon under these regulations, shall forfeit and pay a sum not exceeding \$100 and costs;

and, in default of payment of the fine and costs, may be imprisoned for any period not exceeding six months.

19. Provided that nothing in these regulations shall extend to prevent Dominion Lands Surveyors in their operations from taking up posts or other boundary marks when necessary.

20. The holder of a mineral claim shall be entitled to all minerals, the property of the Crown, which may lie within his claim, but he shall not be entitled to mine outside the boundary lines of his claim continued vertically downwards.

21. These regulations shall not prejudice the rights of claim-owners nor claim-holders whose claims have been located under former regulations.

22. No mineral claim shall be recorded without the application being accompanied by an affidavit or solemn declaration made by the application on Form "A" of these regulations, or if it be a fractional claim, in the Form "A1."

23. Provided that the failure on the part of a locator of a mineral claim to comply with any of the foregoing provisions shall not be deemed to invalidate such location, if upon the facts it shall appear to the satisfaction of the Mining Recorder that such locator has actually discovered mineral in place on said location, and that there has been on his part a *bona fide* attempt to comply with the provisions of these regulations, and that the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity.

24. Any location made upon Sunday or any public holiday shall not for that reason be invalid.

25. The Minister of the Interior may grant a location for the mining of iron and mica, not exceeding 160 acres in area, which shall be bounded by due north and south and east and west lines, and its breadth and length shall be equal. Provided, that should any free miner making an application purporting to be for the purpose of mining iron or mica, thus obtain, whether in good faith or fraudulently, possession of a valuable mineral deposit other than iron or mica, his right in such deposit shall be restricted to the area hereinbefore prescribed for other minerals, and the rest of the location shall thereupon revert to the Crown for such disposition as the Minister may direct.

26. Provided also, that all the requirements as to the location, and survey of claims contained in these regulations shall govern such locations as far as they can be made to apply, and provided also, that the amount to be paid to the Government for such locations or the amount of work to be done on same from year to year or to obtain a Crown grant, shall be determined by the Minister of the Interior.

27. Every free miner locating a mineral claim shall record the same with the Mining Recorder of the district within which the same is situate, within fifteen days after the location thereof, if located within ten miles of the office of the said recorder. One additional day shall be allowed for such record for every additional ten miles, or fraction thereof. Such record shall be made in a book to be kept for the purpose in the office of the said Mining Recorder, in which shall be inserted the name of the claim, the name of the locator, the number of each locator's free miner's certificate, the locality of the mine, the direction and length of the lines from posts Nos. 1 to 2, the date of location and the date of record. Such record shall be, as near as may be possible, in the Form B, in the Schedule of these regulations, and a certified copy thereof shall be given by the Mining Recorder to the free miner or his agent. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned.

28. In the event of the claim being more than one hundred miles from a recorder's office, and situated where other claims are being located, the free miners, not less than five in number, are authorized to meet and appoint one of their number a "Free Miner's Recorder," who shall act in that capacity until a mining recorder is appointed by the Gold Commissioner.

29. The "Free Miners' Recorder" shall, at the earliest possible date after his appointment, notify the nearest Government Mining Recorder thereof, and upon the arrival of the Government Mining Recorder, he shall deliver to him his records and the fees received for recording the claims. The Government Mining Recorder shall then grant to each free miner whose name appears in the records an entry for his claim on Form "B" of these regulations, provided an application has been made by him in accordance with Form "A" or "A1" thereof. The entry to date from the time the "Free Miners' Recorder" recorded the application. If the Free Miners' Recorder fails within three months to notify the nearest Government Mining Recorder of his appointment, the claims which he may have recorded will be cancelled.

29a. Any free miner shall not be entitled to a record of a mineral claim until he shall have furnished the said Mining Recorder with all the above particulars.

30. The record of a mineral claim shall be made at the office of the Mining Recorder of the district in which the claim is situate.

31. Any free miner having duly located and recorded a mineral claim shall be entitled to hold it for the period of one year from the recording of the same, and thence from year to year without the necessity of re-recording. Provided, however, that during each year and each succeeding year, such free miner shall do, or cause to be done, work on the claim itself to the value of one hundred dollars, and shall satisfy the Mining Recorder that such work has been done, by an affidavit of the free miner in the Form "C" of these regulations, and corroborated by two reliable and disinterested witnesses setting out a detailed statement of such work, and shall obtain from the Mining Recorder a certificate of such work having been done on Form "D" hereto. Provided also, that all work done outside of a mineral claim with intent to work the same shall, if such work has direct relation and be in direct proximity to the claim, be deemed, if to the satisfaction of the Mining Recorder for the purpose of this section, to be work done on the claim. Provided further, that adjoining claims, not exceeding eight in number, may be worked by the owners thereof in partnership upon filing a notice of their intention with the Mining Recorder, and upon obtaining a certificate according to Form "E" of these regulations. This certificate will allow the holder thereof to perform on any one or more of such claims all the work required to entitle him or them to a certificate of work for each claim so held by him or them. If such work shall not be done, or if such certificate shall not be so obtained and recorded in each and every year, the claim shall be deemed vacant and abandoned.

32. The holder of a mineral claim may, in lieu of the work required to be done by section 31 of these regulations on a claim in each year, pay to the Mining Recorder, in whose office the claim is recorded, the sum of one hundred dollars, and receive from such Mining Recorder a receipt for such payment. Such payment and the record thereof in any year shall relieve the person making it from the necessity of doing any work during the year in and for which and upon the claim in respect of which such payment is recorded.

33. The holder of a mineral claim on vacant Dominion lands shall be entitled to all surface rights, including the use of all timber

thereon for mining or building purposes in connection with the working of said claim for the purpose of developing the minerals contained therein.

34. In case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself, and subject, further, to the free miner having complied with all the terms and conditions of these regulations.

35. Upon any dispute as to the title to any mineral claim no irregularity happening previous to the date of the record of the last certificate of work shall affect the title thereto, and it shall be assumed that up to that date the title to such claim was perfect, except upon suit by the Attorney-General of Canada based upon fraud.

36. No free miner shall be entitled to hold in his own name, or in the name of any other person, more than one mineral claim on the same vein or lode, except by purchase, but such free miner may hold by location a claim upon any separate vein or lode.

37. A free miner may at any time abandon any mineral claim by giving notice in writing of his intention to abandon to the Mining Recorder, and from the date of the record of such notice all interest of such free miner in such claim shall cease.

38. When a free miner abandons a mineral claim he shall have the right to take from the same any machinery and any personal property which he may have placed on the claim, and any ore which he may have extracted therefrom, within such time as shall be fixed by the Mining Recorder.

39. No free miner shall be entitled to re-locate any mineral claim, or any portion thereof, which he shall have failed to record within the prescribed period, or which he shall have abandoned or forfeited, unless he shall have obtained the written permission of the Mining Recorder to make such re-location; and he shall hold no interest in any portion of such mineral claim, by location, without such permission.

40. Where a tunnel is run for the development of a vein or lode the owner of such tunnel shall, in addition to any mineral claim legally held by him, have the right to all veins or lodes discovered in

such tunnel, provided that the ground containing such veins or lodes be marked out by him as a mineral claim, and be duly recorded within fifteen days after such discovery; and provided further, that such veins or lodes are not included in any existing mineral claim. Any money or labour expended in constructing a tunnel to develop a vein or lode shall be deemed to have been expended on such vein or lode.

41. The interest of a free miner in his mineral claim shall, save as to claims held as real estate, be deemed to be a chattel interest, equivalent to a lease, for one year, and thence from year to year, subject to the performance and observance of all the terms and conditions of these regulations.

42. Any lawful holder of a mineral claim shall be entitled to a Crown grant thereof, on payment to the Dominion Government of the sum of five hundred dollars in lieu of expenditure on the claim, in addition to the amount payable as provided by section 53 of these regulations. The intending purchaser shall comply with all the provisions of these regulations, except such as have respect solely to the work required to be done on claims.

43. Whenever the lawful holder of a mineral claim shall have complied with the following requirements, to the satisfaction of the Mining Recorder, he shall be entitled to receive from the Recorder a certificate of improvements, Form "F," in respect of such claim, unless proceedings by the person claiming an adverse right under section 43a of these regulations have been taken.

(a) Done or caused to be done work on the claim itself in developing a mine to the value of five hundred dollars, exclusive of all houses, buildings and other like improvements. For the purpose of this section, work done on a claim by a predecessor or predecessors in title shall be deemed to have been done by the applicant who receives a transfer of such claim; but in no case shall the cost of surveying be considered as improvements or work done on a claim, unless the survey is made within one year from the date of recording the claim, in which case the cost of the survey, not to exceed \$100, however, shall be counted as work done on the claim.

(b) Found a vein or lode within the limits of such claim.

(c) Had the claim surveyed at his own expense in accordance with instructions from the Surveyor-General, by an authorized Dominion Land Surveyor, and had the survey thereof approved by the Surveyor-General.

The surveyor shall accurately define and mark the boundaries of such claim on the ground in full compliance with the instructions issued to him, and shall, on completion of survey, forward at once to the Surveyor-General at Ottawa, the original field notes and plan signed and certified as accurate, under oath. After a certificate of improvements has issued in respect of any claim so surveyed, original evidence of its location upon the ground may be given by any person who has seen and can describe the position of such improvements to be marked as aforesaid.

(d) Shall have posted on some conspicuous part of the land embraced in the survey a copy of the plan on the claim signed and certified as accurate under oath by the surveyor, and a legible notice in writing in Form "G" of the Schedule of these regulations, of his intention to apply for a certificate of improvements, and shall also have posted a similar notice in the Mining Recorder's office, and such notice shall contain:—

- (1) The name of the claim;
- (2) The name of the lawful holder thereof;
- (3) The number of such holder's existing free miner's certificate;
- (4) His intention to apply for certificate of improvements at the end of sixty days, for the purpose of obtaining a Crown grant;
- (5) The date of the notice.

(e) Inserted a copy of such notice in a newspaper published in and circulated in the district in which the claim is situated, such paper to be approved by the Mining Recorder, for at least sixty days prior to such application, which insertion can be made at any time after the posting of the notice on the claim.

If no paper is published in the district, then the notice shall appear in the nearest published paper.

(f) Shall have filed with the Mining Recorder a copy of the surveyor's original field notes and plan, signed and certified as accurate under oath by the surveyor, immediately after posting the notice on the claim of his intention to apply for a certificate of improvements.

(g) Filed with the Mining Recorder an affidavit of the holder of the claim in the Form "H" in the Schedule of these regulations.

(h) At the expiration of the term of the said publication, provided no action shall have been commenced and notice thereof filed with the Mining Recorder, he shall forward to the owner or agent, under Form "I" of the Schedule to these regulations, the documents referred to above, together with a certificate that the notice provided by section 43, sub-section (d), has been posted in his office, and the field notes and plan deposited for reference therein from the date of the first appearance of the said notice in the nearest local newspaper, and continuously therefrom for a period of at least sixty days. The Mining Recorder shall also set out in Form "I" the name of the recorded owner of the claim at the date of signing the same.

43a. (1) A certificate of improvements, when issued as aforesaid, shall not be impeached in any Court on any ground except that of fraud.

(2) In case any person shall claim an adverse right of any kind, either to possession of the mineral claim referred to in the application for certificate of improvements, or any part thereof, or to the minerals contained therein, he shall, within sixty days after the first publication in the nearest local newspaper of the notice referred to in section 43 hereof (unless such time shall be extended by special order of the Court upon cause being shown), commence legal action to determine the question of the right of possession or otherwise enforce his said claim, and shall file a copy of the writ, information, bill of complaint or other initiatory proceeding in said action with the Mining Recorder of the district or mining division in which the said claim is situate within twenty days from the commencement of said action, and shall prosecute the said action with reasonable diligence to final judgment, and a failure to so commence or so to prosecute shall be deemed to be a waiver of the plaintiff's claim. After final judgment shall have been rendered in the said action the person or any one of the persons entitled to the possession of the claim, or any part thereof, may file a certified copy of the same in the office of the Mining Recorder. After the filing of the said judgment, and upon compliance with all the requirements of the next preceding section, such person or persons shall be entitled to the issue to him or to them of a certificate of improvements in respect of the claim or the portion thereof which he or they shall appear from the decision of the Court rightly to possess. Provided, that this section shall not apply to any adverse claim filed or action to enforce the same commenced prior to the date of these regulations coming into force, but the same shall be continued in the same manner as if these regulations had not been passed.

44. After the issuing and recording of such certificate of improvements, and while such certificate shall be in force, it shall not be necessary to do any work on such claim.

45. On the granting and recording of such certificate of improvements in respect to a mineral claim the holder thereof shall be entitled to a Crown grant of such claim upon the payment of the purchase money required by section 46.

46. The holder of a mineral claim for which a certificate of improvements has been granted and recorded, shall make application for a Crown grant through the Mining Recorder to the Minister of the Interior, enclosing his certificate of improvements, the Mining Recorder's receipts for payment of the purchase money of a claim or fractional claim at the rate of five dollars per acre, or two dollars if the mining right only is being obtained, and the Crown grant fee of five dollars, the Mining Recorder's certificate, Form "I," the field notes and plan of survey and the affidavit, Form "H," within three months from the date of such certificate of improvements, and in default of such application having been made within such time such certificate of improvements shall lapse and become absolutely void.

47. If the holder of a mineral claim, after applying for a certificate of improvements shall sell and transfer such claim to another free miner upon satisfactory proof of such sale and transfer being made to the Mining Recorder, the new holder of the claim shall be entitled to a certificate of improvements in his own name.

48. If a sale and transfer shall be made to any person or company after a certificate of improvements shall have been issued, upon proper proof of such sale and transfer being made to the satisfaction of the Minister of the Interior, the Crown grant shall issue to the new holder of the claim.

49. The issuance of a Crown grant shall not invalidate any lien which may have attached to any mineral claim previous to the issuance of such Crown grant.

50. A Crown grant of a mineral claim located on any vacant Dominion lands shall be deemed to transfer and pass the surface right and right to all minerals within the meaning of these regulations (excepting coal) found in veins, lodes, or rock in place, and whether such minerals are found separately or in combination with

each other, in, upon or under the land in the said Crown grant mentioned.

51. Crown grants of mineral claims located on lands the surface rights of which have been disposed of, but the right whereon to enter, prospect, and mine all minerals (other than coal) has been reserved to the Crown, shall pass to the grantee all minerals within the meaning of these regulations (other than coal) found in veins or lodes, or rock in place, and whether such minerals are found separately or in combination with each other, which may be in, upon or under the land in the said Crown grant mentioned, and including all the rights given to the claim-holders of mineral claims so located.

52. Where the mineral claim is located on land lawfully occupied under a timber lease, the Crown grant shall convey the surface and minerals within the meaning of these regulations (save coal) found in veins or lodes, or rock in place, but shall reserve the timber.

53. The price to be paid for a mining location on vacant lands of the Crown shall be at the rate of five dollars per acre, cash, and on other lands of which the surface rights are not available for sale, two dollars per acre, cash.

53a. The patent for a mining location shall reserve to the Crown forever whatever royalty may hereafter be imposed on the sales of the products of all mines therein, and the same royalty shall be collected on the sales which may be made prior to the issue of the patent. The royalty shall be collected in such manner as may be prescribed by the Minister of the Interior.

53b. Crown grants of mineral claims located on lands disposed of, the right whereon to enter and mine gold and silver has been reserved to the Crown, shall pass to the grantee all the gold and silver found in veins or lodes, or rock in place, which may be in, upon, or under the land in the said Crown grant mentioned, and including all the rights given to mineral claim-holders of mineral claims so located.

54. If an adverse claim shall only affect a portion of the ground for which a certificate of improvements is applied, the applicant may relinquish the portion covered by the adverse claim, and still be entitled to a certificate of improvements for the undisputed remainder of his claim, upon complying with the requirements of these regulations. When judgment in such case is rendered by the Court, a memorandum of such judgment shall be entered in the "Record

Book" by the Mining Recorder; and if by any judgment the original boundaries of any claim shall be changed, a plan made by a Dominion land surveyor, and signed by the Judge by whom the judgment has been given, shall be filed with the Mining Recorder, who shall forward it to the Department of the Interior.

55. Every conveyance, bill of sale, mortgage or other document of title relating to any mineral claim not held as real estate or mining interest, shall be recorded with the Mining Recorder within the time prescribed for recording mineral claims. Provided always, that the failure to so record any such document shall not invalidate the same as between the parties thereto, but such documents as to third parties shall take effect from the date of record, and not from the date of such document. And provided further, that after the issuance of a Crown grant for any mineral claim it shall not be necessary to register any transfer or other document of title executed subsequent to such Crown grant with the Mining Recorder of the district in which the said claim is situated; but all documents relating to the same may thereafter be registered in the same manner as are other documents of title relating to the transfer of real estate, and in the North-West Territories all the provisions of "The Land Titles Act," and any amendments thereto, shall apply to such registration.

56. No transfer of any mineral claim, or of any interest therein shall be effectual unless the same is in writing and accompanied by the record of entry (Form B), signed by the transferror, or by his agent authorized in writing, and recorded by the Mining Recorder; and, if signed by an agent, the authority of such agent shall be recorded before the record of such transfer. The assignment shall be in duplicate, and when recorded the Mining Recorder shall return to the assignee one copy thereof with a certificate endorsed thereon that it has been recorded in his office, and retain the other copy. The Mining Recorder shall also endorse on Form "B" the particulars of the assignment recorded, and return the form to the holder thereof. All mineral claims derived under Crown grant, and every transfer thereof, or any interest therein, shall, in the North-West Territories, be registered under the provisions of "The Land Titles Act."

57. No mineral claims shall be open to location by any other person during the last illness, nor, unless with the permission in writing of the Mining Recorder, for twelve months after the death of the lawful holder.

58. No free miner shall suffer from any acts of omission or commission, or delays on the part of any Government official, if such can be proven.

MILL SITES.

59. A free miner may locate any unoccupied and unreserved Crown land not known to contain mineral, and not exceeding five acres, as a mill site. Lands valuable for water power are excepted from location as mill-sites unless with the authority of the Governor in Council. No free miner shall be entitled to obtain and hold under this section more than one mill-site for each mineral claim lawfully held by him. Such mill-site shall be as nearly as possible in the form of a square. On locating a mill-site, the free miner shall comply with the following requirements:—

- (a) Mark out the land by placing a legal post at each corner.
- (b) Post a notice on each post, stating—
 - (1) The name of such free miner;
 - (2) The number of his free miner's certificate;
 - (3) His intention at the expiration of sixty days from the date of the notice to apply for the land as a mill-site;
 - (4) The date of notice.
- (c) Post a copy of such notice on the office of the Mining Recorder.

60. On the expiration of sixty days after the fulfilment of the above requirements, the free miner shall deposit in the office of the Mining Recorder a plan and field notes made by an authorized Dominion Land Surveyor in accordance with instructions from the Surveyor-General, and prove by affidavit that he has complied with the above requirements, and that the said land is not known to contain minerals, and is not valuable for water power, and he shall furnish such other proof of the non-mineral character of the land as the Mining Recorder may require.

61. If the plan and field notes are approved by the Surveyor-General and the proof referred to in the preceding paragraph has been furnished the free miner shall then be entitled to a lease (Form "J"), for one year, of the said land; which lease shall be executed

by the Minister of the Interior. If, during the continuance of such lease, such free miner shall prove to the satisfaction of the Mining Recorder that he has put or constructed works, or machinery for mining or milling purposes, on the said mill-site, of the value of at least five hundred dollars (Form "K"), he shall be entitled to a Crown grant of such mill-site upon payment of five dollars per acre for such land and a fee of five dollars. Any free miner now having a lease of a piece of land for a mill-site upon proving to the satisfaction of the Mining Recorder that he has put or constructed works, or machinery for mining or milling purposes on the said mill-site of the value of at least five hundred dollars, shall, on payment of five dollars per acre, and a fee of five dollars for the issue of a patent, be entitled to a Crown grant of such mill-site.

62. On applying for a Crown grant of a mill-site, the free miner shall—

- (1) Pay the sum of five dollars per acre to the Mining Recorder;
- (2) Deposit with the Mining Recorder the following documents :—
 - (a) Lease of the mill-site;
 - (b) Plan of the mill-site;
 - (c) A certificate from the Mining Recorder that works or machinery for mining or milling purposes have been put or constructed on the mill-site to the value of at least five hundred dollars. (Form "L.")
 - (d) Application for the Crown grant. (Form "M.")

63. Crown grants of mill-sites shall pass to the grantee all the surface of the land in the said Crown grant mentioned, but all such Crown grants shall expressly reserve all minerals under the said land, and the right to the Crown and its licensees to enter and mine the said minerals.

TUNNELS AND DRAINS.

64. Any free miner, being the holder of a mineral claim, or mine held as real estate, may, at the discretion of the Mining Recorder obtain a license (Form "N") to run a drain or tunnel, for drainage or any other purpose connected with the development or working of such claim or mine, through any occupied or unoccupied lands, whe-

ther mineral or otherwise, upon security being first deposited or given to such Mining Recorder to his satisfaction for any damage that may be done thereby, and upon such other terms as he shall think expedient.

WATER RIGHTS.

65. A free miner who is the holder of a mineral claim or mine held as real estate, or of any mill-site, may obtain a grant to a water right of any unappropriated water, for any mining or milling purpose, in accordance with the provisions of "The North-West Irrigation Act."

WORKING OF MINES OR CLAIMS, AND OTHER POWERS.

66. The Mining Recorder may, in his discretion, permit a free miner to re-locate a mineral claim, or any part thereof, which may have been abandoned or forfeited by such free miner. Provided that such re-locations shall not prejudice or interfere with the rights or interests of others.

67. The Mining Recorder may mark out a space of ground for deposit of leavings and deads from any tunnel, claim or mining ground, upon such terms as he may think just.

68. The Mining Recorder shall have the power to summarily order any mining works to be so carried on as not to interfere with or endanger the safety of the public or any employees of such mining works, any public work or highway, or any mining property, mineral claims, mining claims, bed-rock drains, or bed-rock flumes; and any abandoned works may by his order be either filled up or guarded to his satisfaction.

HEARING AND DECISION OF DISPUTES.

69. The Mining Recorder shall have power to hear and determine all disputes in regard to mining property previous to the issue of Crown grant thereof arising within his district, subject to appeal by either of the parties to the Minister of the Interior.

70. No particular forms of procedure shall be necessary, but the matter complained of must be properly expressed in writing, and a copy of the complaint shall be served on the opposite party not less than seven days before the hearing of the said complaint.

71. The complaint may, by leave of the Mining Recorder, be amended at any time before or during the proceedings.

72. The complainant shall, at the time of filing his complaint, deposit therewith a bond-fee of \$20, which shall be returned to him if the complaint proves to have been well founded, and not otherwise, except for special cause, by direction of the Minister of the Interior.

73. In the event of the decision of the Mining Recorder being made the subject of an appeal to the Minister of the Interior, the appellant shall, at the time of lodging the appeal, deposit with the agent a bond-fee of \$20, which shall be returned to the said appellant if his appeal proves to have been well founded, and not otherwise, except for special cause, by direction of the Minister of the Interior.

74. The appeal must be in writing, and must be lodged with the Mining Recorder not more than twenty days after his decision has been communicated in writing to all the parties interested, and must state the grounds upon which the said decision is appealed from.

75. If the Mining Recorder decides that it is necessary to a proper decision of the matter in issue, to have an investigation on the ground, or, in cases of disputed boundaries or measurements, to employ a Dominion land surveyor to measure or survey the land in question, the expense of the inspection or re-measurement or re-survey, as the case may be, shall be borne by the litigants, who shall pay into the hands of the Mining Recorder in equal parts, such sum as he may think sufficient for the same before it takes place; otherwise it shall not proceed, and the party who refuses to pay such sum shall be adjudged in default. The said Mining Recorder shall subsequently decide in what proportion the said expense should be borne by the parties respectively, and the surplusage, if any, shall then be returned to the parties, as he may order.

76. All bond-fees adjudged as forfeited and all payments retained under the last preceding section, shall, as soon as decision has been rendered, and all entry and other fees or moneys shall, as soon as they have been received by him, be paid by the said Mining Recorder to the credit of the Receiver-General in the same manner as other moneys received by him on account of Dominion lands.

MISCELLANEOUS.

77. No person mining upon any claim shall cause damage or injury to the holder of any claim other than his own by throwing earth, clay, stones, or other material upon such other claim, or by causing or allowing water which may be pumped or baled, or may flow from his own claim, to flow into or upon such other claim under the penalty of not more than \$5 and costs, and in default of the payment of the fine and costs he may be imprisoned for any period not more than one month.

78. Nothing herein contained shall, save where such intention is expressly stated, be so construed as to affect prejudicially any mining rights and interests acquired prior to the passing of these regulations; and all mining rights and privileges heretofore and hereunder acquired shall, without the same being expressly stated, be deemed to be taken and held subject to the rights of Her Majesty, her heirs and successors, and to the public rights of way and water.

79. Every free miner, on application to the Mining Recorder of the district, shall be entitled to a printed copy of these regulations free of charge.

80. Affidavits and declarations made under the provisions of these regulations can be made before any person duly authorized to administer an oath or declaration.

81. The Minister of the Interior, or any one deputed by him, and the Mining Recorder shall have the right to enter into or upon and examine any mineral claim or mine within the meaning of these regulations.

82. Where a claim has been recorded under any name, and the owner or his agent is desirous of changing the same, the Mining Recorder may, upon application being made by such owner or agent, and upon payment of a fee of twenty-five dollars amend the record accordingly. Provided, however, that such change of name shall not in any way affect or prejudice any proceedings or execution against the owners of the said claim.

83. Whenever through the acts or defaults of any person other than the recorded owner of a mineral claim or his agent by him duly authorized, the evidence of the location or record on the ground, or the situation of a mineral claim has been destroyed, lost or effaced,

or is difficult of ascertainment, nevertheless effect shall be given to same as far as possible, and the Court shall have power to make all necessary inquiries, directions and references in the premises, for the purposes of carrying out the object hereof, and vesting title in the first *bona fide* acquirer of the claim.

84. Nothing herein contained shall be construed to limit the right of the Lieutenant-Governor of the North-West Territories in Council, or of the proper authorities in any province containing Dominion lands, to lay out, from time to time, public roads across, through, along, or under any ditch, water privilege or mining right, without compensation.

85. Nothing herein contained shall affect any litigation pending at the time of the passage of these regulations.

86. Should it be proven to the satisfaction of the Mining Recorder that any free miner has been guilty of misrepresentation in the statement sworn to by him in recording any claim, or in any of the statements required to be made by him under oath under these regulations, or to have been found removing or disturbing with intent to remove, or defacing any legal post or stake or other marked placed under the provisions of these regulations, the Mining Recorder may cancel the said free miner's certificate and may in his discretion order that such person be debarred from the right to obtain a free miner's certificate for any length of time he may deem advisable. The Mining Recorder shall forthwith upon any such decision by him notify every other Mining Recorder of such decision. Every free miner shall have the right to appeal from the decision of the Mining Recorder to the Minister of the Interior.

For Forms referred to in these regulations, see Appendix II.

REGULATIONS GOVERNING PLACER MINING IN THE PROVISIONAL DISTRICT OF YUKON, NORTH-WEST TERRITORIES.

(Approved by Order in Council of 18th January, 1898.)

INTERPRETATION.

"Free miner" shall mean a male or female over the age of eighteen but not under that age, or joint stock company, named in, and lawfully possessed of, a valid existing free miner's certificate, and no other.

"Legal post" shall mean a stake standing not less than four feet above the ground and flatted on two sides for at least one foot from the top. Both sides so flatted shall measure at least four inches across the face. It shall also mean any stump or tree cut off and flatted or faced to the above height and size.

"Close season" shall mean the period of the year during which placer mining is generally suspended. The period to be fixed by the Mining Recorder in whose district the claim is situated.

"Mineral" shall include all minerals whatsoever other than coal.

"Joint Stock Company" shall mean any company incorporated for mining purposes under a Canadian charter or licensed by the Government of Canada.

"Mining Recorder" shall mean the official appointed by the Gold Commissioner to record applications and grant entries for claims in the Mining Divisions into which the Commissioner may divide the Yukon District.

FREE MINERS AND THEIR PRIVILEGES.

1. Every person over, but not under eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a free miner, under these regulations and under the regulations governing quartz mining, and shall be considered a free miner upon taking out a free miner's certificate. A free miner's certificate issued to a joint stock company shall be issued in its corporate name. A free miner's certificate shall not be transferable.

2. A free miner's certificate may be granted for one year to run from the date thereof or from the expiration of the applicant's then existing certificate, upon the payment therefor of the sum of \$10, unless the certificate is to be issued in favour of a joint stock company, in which case the fee shall be fifty dollars for a company having a nominal capital of \$100,000 or less, and for a company having a nominal capital exceeding \$100,000, the fee shall be one hundred dollars. Only one person or joint stock company shall be named in a certificate.

3. A free miner's certificate shall be on the following form:--

DOMINION OF CANADA.

FREE MINER'S CERTIFICATE.

(Non-transferable.)

Date

No.

Valid for one year only.

This is to certify that _____ of _____ has paid me this day the sum of _____ and is entitled to all the rights and privileges of a free miner, under any mining regulations of the Government of Canada, for one year from the _____ day of _____ 18 .

This certificate shall also grant to the holder thereof the privilege of fishing and shooting, subject to the provisions of any Act which has been passed, or which may hereafter be passed for the protection of game and fish; also the privilege of cutting timber for actual necessities, for building houses, boats, and for general mining operations; such timber, however, to be for the exclusive use of the miner himself, but such permission shall not extend to timber which may have been heretofore or which may hereafter be granted to other persons or corporations.

4. Free miners' certificates may be obtained by applicants in person at the Department of the Interior, Ottawa, or from the agents of Dominion Lands at Winnipeg, Manitoba; Calgary, Edmonton, Prince Albert, in the North-west Territories; Kamloops and New Westminster, in the Province of British Columbia; at Dawson City in the Yukon District; also from agents of the Government at Vancouver and Victoria, B.C., and at other places which may from time to time be named by the Minister of the Interior.

5. If any person or joint stock company shall apply for a free miner's certificate at the agent's office during his absence, and shall leave the fee required by these regulations, with the officer or other person in charge of said office, he or it shall be entitled to have such certificate from the date of such application; and any free miner shall at any time be entitled to obtain a free miner's certificate commencing to run from the expiration of his then existing free miner's certificate, provided that when he applies for such certificate, he shall produce to the agent, or in case of his absence shall leave with the officer or other person in charge of the agent's office, such existing certificate.

6. If any free miner's certificate be accidentally destroyed or lost, the owner thereof may, on payment of a fee of two dollars, have a true copy of it, signed by the agent, or other person by whom or out of whose office the original was issued. Every such copy shall be marked "Substituted Certificate"; and unless some material irregularity be shown in respect thereof, every original or substituted free miner's certificate shall be evidence of all matters therein contained.

7. No person or joint stock company will be recognized as having any right or interest in or to any placer claim, quartz claim, mining lease, bed-rock flume grant, or any minerals in any ground comprised therein, or in or to any water right, mining ditch, drain, tunnel, or flume,¹ unless he or it and every person² in his or its employment shall have a free miner's certificate unexpired. And on the expiration of a free miner's certificate the owner thereof shall absolutely forfeit all his rights and interest in or to any placer claim, mining lease, bed-rock flume grant, and any minerals in any ground comprised therein,³ and in or to any and every water right, mining ditch, drain, tunnel, or flume, which may be held or claimed by such owner of such expired free miner's certificate, unless such owner shall, on or before the day following the expiration of such certificate, obtain a new free miner's certificate. Provided, nevertheless, that should any co-owner fail to keep up his free miner's certificate, such failure shall not cause a forfeiture or act as an abandonment of the claim, but the interest of the co-owner who shall fail to keep up his free miner's certificate shall, *ipso facto*, be and become vested in his co-owners, *pro rata* according to their former interests; provided, nevertheless, that a shareholder in a joint stock company need not be a free miner, and though not a free miner, shall be entitled to buy, sell, hold, or dispose of any shares therein.

¹ "Flume" is defined by the Standard Dictionary to be "a conduit, usually a wooden structure, for conveying water to be utilized, as for a mill-wheel, or an ore-washer." In the United States it may mean "a narrow passage or gap through which a torrent passes," or "a chute," or "a river." A chute is (1) An inclined trough or vertical conduit for conveying water or solid materials from a higher to a lower level. (2) An inclined watercourse, natural or artificial, especially one through which boats or timber are carried, as in a dam.

² *Quære*, whether this would extend to persons in the employ of the free miner or joint-stock company outside the Provisional District of Yukon. The words are unlimited, and it would therefore be discreet for intending investors to obtain an interpretation by competent authority, *i.e.*, the Minister of the Interior, Gold Commissioner, or Mining Recorder, at the earliest possible moment.

*The right of a free miner to work his claim subject to the regulations is property, and although the title to the land remains vested in the Crown, the free miner is the owner of the minerals which he severs from the land.

Forbes v. Gracey, 1876, 94 N. S. R. 762.

8. Every free miner shall, during the continuance of his certificate, but not longer, have the right to enter, locate, prospect, and mine for gold and other minerals upon any lands in the Yukon District, whether vested in the Crown or otherwise, except upon Government reservations for town sites, land which is occupied by any building, and any land falling within the curtilage of any dwelling house, and any land lawfully occupied for placer mining purposes, and also Indian reservations.¹

¹ As to Indian Reserves:

See St. Catherine's M. & L. Co. v. The Queen, 14 App. Cas. 46.

See The Indian Act, R. S. C. 1886, c. 43.

9. Previous to any entry being made upon lands lawfully occupied, such free miner shall give adequate security, to the satisfaction of the Mining Recorder, for any loss or damage which may be caused by such entry; and after such entry he shall make full compensation to the occupant or owner of such lands for any loss or damage which may be caused by reason of such entry; such compensation, in case of dispute, to be determined by a court having jurisdiction in mining disputes, with or without a jury.

NATURE AND SIZE OF CLAIMS.

10. A creek¹ or gulch claim shall be 250 feet long measured in the general direction of the creek or gulch. The boundaries of the claim which run in the general direction of the creek or gulch shall be lines along bed or rim rock three feet higher than the rim or edge of the creek, or the lowest general level of the gulch within the claim, so drawn or marked as to be at every point three feet above the rim or edge of the creek or the lowest general level of the gulch, opposite to it at right angles to the general direction of the claim for its length, but such boundaries shall not in any case exceed 1,000 feet on each side of the centre of the stream or gulch. (See Diagram No. 1.)

¹The word "creek" is obviously not used in the English sense as meaning "a small inlet, bay, or cove, a recess in the shore of the sea," etc., but with the American meaning of a "small stream less than a river." It is used in contradistinction to the word river in No. 12.

The word is used in the statute 28 Hen. VIII. c. 15, s. 1.

See Coulson & Forbes on Waters, p. 11; *R. v. Keyn*, 1876, 2 Ex. Div. 63.

Hall on the Sea Shore, p. 15.

Hale, *De Jure Maris*, p. 7, c. 4.

Baker v. City of Boston, 1831, 12 Pick. (Mass.) 183.

Schermerhorn v. Hudson River R. Co., 1868, 38 N. Y. 103.

Whelan v. McLachlan, 1865, 16 U. C. C. P. 102, following *Boale v. Dickson*, 1863, 13 U. C. C. P. 337, which was overruled by the Privy Council in *Caldwell v. McLaren*, (1894) App. Cas. 392.

11. If the boundaries be less than one hundred feet apart horizontally, they shall be lines traced along bed or rim rock one hundred feet apart horizontally, following as nearly as practicable the direction of the valley for the length of the claim. (See Diagram No. 2.)

12. A river claim shall be situated only on one side of the river¹ and shall not exceed 250 feet in length, measured in the general direction of the river. The other boundary of the claim which runs in the general direction of the river shall be lines along bed or rim rock three feet higher than the rim or edge of the river within the claim so drawn or marked as to be at every point three feet above the rim or edge of the river opposite to it at right angles to the general direction of the claim for its length, but such boundaries shall not in any case be less than 250 feet, or exceed a distance of 1,000 feet from low water mark of the river. (See Diagram No. 3.)

¹ A river is defined in the Standard Dictionary as a large stream. No test is given for determining how large a stream must be to become a river. It is possible that the test may be held to be navigability.

The signification of the word river was discussed in *The State v. Gilman*, 1843, 14 N. H. 467.

The meaning of the word river was discussed in *McHardy v. Ellice*, 1877, 1 A. R. 628, where a stream called Black Creek, from 30 to 40 feet wide, was held to be a river.

Woolrych on Sewers, 31.

Callis on Sewers, 77.

"A body of flowing water of no specific dimensions—larger than a brook or rivulet, less than a sea—a running stream, pent on each side by walls or banks." *Alabama v. Georgia*, 23 Howard (U. S.) 513.

13. A "hill claim" shall not exceed 250 feet in length, drawn parallel to the main direction of the stream¹ or ravine on which it fronts. Parallel² lines drawn from each end of the base line at right angles thereto, and running to the summit of the hill (provided the

distance does not exceed 1,000 feet), shall constitute the end boundaries of the claim.

The meaning of the word "streams" in an Ontario statute was considered by the Privy Council in *Caldwell v. McLaren*, 1884, 9 App. Cas. 392.

The statute passed in consequence of this decision is entitled "An Act for protecting the public interest in Rivers, Streams and Creeks." R. S. O. 1897, c. 142.

The word "stream" is defined for the purposes of "Rivers Pollution Prevention Act, 1876," by 39 & 40 Vict. (Imp.) c. 75, s. 20.

In *Clark v. Adie*, 1877, 2 App. Cas. 423, the word "parallel" was construed in its popular and not in its purely mathematical sense.

14. All other placer claims shall be 250 feet square.

15. Every placer claim shall be as nearly as possible rectangular in form, and marked by two legal posts firmly fixed in the ground in the manner shown in diagram No. 4. The line between the two posts shall be well cut out so that one post may, if the nature of the surface will permit, be seen from the other. The flatted side of each post shall face the claim, and on each post shall be written on the side facing the claim, a legible notice stating the name or number of the claim, or both if possible, its length in feet, the date when staked, and the full christian and surname of the locator.

16. Every alternate ten claims shall be reserved for the Government of Canada. That is to say when a claim is located, the discoverer's claim and nine additional claims adjoining each other and numbered consecutively will be open for registration. Then the next ten claims of 250 feet each will be reserved for the Government, and so on. The alternate group of claims reserved for the Crown shall be disposed of in such manner as may be decided by the Minister of the Interior.

17. The penalty for trespassing upon a claim reserved for the Crown, shall be immediate cancellation by the Mining Recorder of any entry or entries which the person trespassing may have obtained, whether by original entry or purchase, for a mining claim, and the refusal by the Mining Recorder of the acceptance of any application which the person trespassing may at any time make for a claim. In addition to such penalty, the Mounted Police, upon a requisition from the Mining Recorder to that effect, shall take the necessary steps to eject the trespasser.

18. In defining the size of claims, they shall be measured horizontally irrespective of inequalities on the surface of the ground.

19. If any free miner or party of free miners discover a new mine, and such discovery shall be established to the satisfaction of the Mine Recorder, creek, river, or hill, claims of the following size shall be allowed, namely:—

To one discoverer, one claim, 500 feet in length.

To a party of two discoverers, two claims, amounting together to 1,000 feet in length.

To each member of a party beyond two in number, a claim of the ordinary size only.

20. A new stratum of auriferous earth or gravel situated in a locality where the claims have been abandoned shall for this purpose be deemed a new mine, although the same locality shall have been previously worked at a different level.

21. The forms of application for a grant for placer mining, and the grant of the same, shall be those contained in forms "H" and "I" in the schedule hereto.

22. A claim shall be recorded with the Mining Recorder in whose district it is situated, within ten days after the location thereof, if it is located within ten miles of the Mining Recorder's office. One extra day shall be allowed for every additional ten miles or fraction thereof.

23. In the event of the claim being more than one hundred miles from a Recorder's office, and situated where other claims are being located, the free miners, not less than five in number, are authorized to meet and appoint one of their number a "Free Miners' Recorder," who shall act in that capacity until a Mining Recorder is appointed by the Gold Commissioner.

24. The "Free Miners' Recorder" shall at the earliest possible date after his appointment, notify the nearest Government Mining Recorder thereof, and upon the arrival of the Government Mining Recorder, he shall deliver to him his records and the fees received for recording the claims. The Government Mining Recorder shall then grant to each free miner whose name appears in the records, an entry for his claim on form "I" of these regulations, provided an application has been made by him in accordance with form "H" thereof. The entry to date from the time the "Free Miners' Recorder" recorded the application.

25. If the "Free Miners' Recorder" fails within three months to notify the nearest Government Mining Recorder of his appointment, the claims which he may have recorded will be cancelled.

26. During the absence of the Mining Recorder from his office, the entry for a claim may be granted by any person whom he may appoint to perform his duties in his absence.

27. Entry shall not be granted for a claim which has not been staked by the applicant in person in the manner specified in these regulations. An affidavit that the claim was staked out by the applicant shall be embodied in form "H" in the schedule hereto.

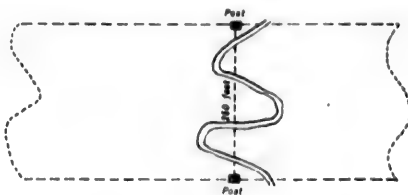
28. An entry fee of fifteen dollars shall be charged the first year, and an annual fee of fifteen dollars for each of the following years. This provision shall apply to claims for which entries have already been granted.

29. A statement of the entries granted and fees collected shall be rendered by the Mining Recorder to the Gold Commissioner at least every three months, which shall be accompanied by the amount collected.

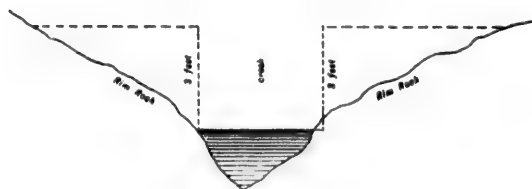
30. A royalty of ten per cent. on the gold mined shall be levied and collected on the gross output of each claim.¹ The royalty may be paid at banking offices to be established under the auspices of the Government of Canada, or to the Gold Commissioner, or to any Mining Recorder authorized by him. The sum of \$2,500 shall be deducted from the gross annual output of a claim when estimating the amount upon which royalty is to be calculated, but this exemption shall not be allowed unless the royalty is paid at a banking office or to the Gold Commissioner or Mining Recorder. When the royalty is paid monthly or at longer periods, the deduction shall be made ratable on the basis of \$2,500 per annum for the claim. If not paid to the bank, Gold Commissioner or Mining Recorder, it shall be collected by the customs officials or police officers when the miner passes the posts established at the boundary of a district. Such royalty to form part of the consolidated revenue, and to be accounted for by the officers who collect the same in due course. The time and manner in which such royalty shall be collected shall be provided for by regulations to be made by the Gold Commissioner.

¹No provision is made for collecting a royalty on gold mined by a free miner, pursuant to the right to mine conferred on him by No. 8.

DIAGRAM No. 1.
PLAN OF CREEK OR GULCH CLAIM.



SECTIONAL PLAN OF A CREEK CLAIM.



SECTIONAL PLAN OF A GULCH CLAIM.

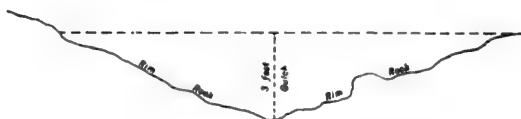


DIAGRAM No. 2.

PLAN SHEWING SIDE BOUNDARIES LESS THAN
100 FEET APART

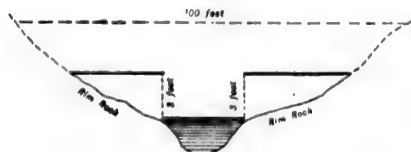


DIAGRAM No. 3.

SECTIONAL PLAN OF A RIVER CLAIM.

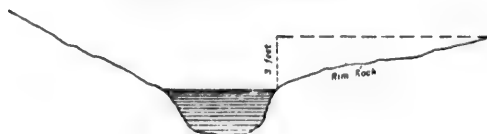
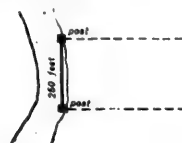


DIAGRAM No. 4

SHEWING HOW CLAIMS ARE TO BE STAKED
PLAN OF A CREEK OR GULCH CLAIM



PLAN OF A RIVER CLAIM



31. Default in payment of such royalty, if continued for ten days after notice has been posted on the claim in respect of which it is demanded, or in the vicinity of such claim, by the Gold Commissioner or his agent, shall be followed by cancellation of the claim. Any attempt to defraud the Crown by withholding any part of the revenue thus provided for, by making false statements of the amount taken out, shall be punished by cancellation of the claim in respect of which fraud or false statements have been committed or made. In respect to the facts as to such fraud or false statements or non-payment of royalty, the decision of the Gold Commissioner shall be final.

32. After the recording of a claim the removal of any post by the holder thereof or by any person acting in his behalf for the purpose of changing the boundaries of his claim, shall act as a forfeiture of the claim.

33. The entry of every holder of a grant for placer mining must be renewed and his receipt relinquished and replaced every year, the entry fee being paid each time.

34. The holder of a creek, gulch or river claim may, within sixty days after staking out the claim, obtain an entry for a hill claim adjoining it, by paying to the Mining Recorder the sum of one hundred dollars. This permission shall also be given to the holder of a creek, gulch or river claim obtained under former regulations, provided that the hill claim is available at the time an application is made therefor.

35. No miner shall receive a grant of more than one mining claim in a mining district, the boundaries of which shall be defined by the Mining Recorder, but the same miner may also hold a hill claim, acquired by him under these regulations in connection with a creek, gulch or river claim, and any number of claims by purchase; and any number of miners may unite to work their claims in common, upon such terms as they may arrange, provided such agreement is registered with the Mining Recorder and a fee of five dollars paid for each registration.

36. Any free miner or miners may sell, mortgage, or dispose of his or their claims, provided such disposal be registered with, and a fee of two dollars paid to the Mining Recorder, who shall thereupon give the assignee a certificate in the form "J" in the schedule hereto.

37. Every free miner shall during the continuance of his grant have the exclusive right of entry upon his own claim for the miner-like working thereof, and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom, upon which, however, the royalty prescribed by these regulations shall be payable; provided that the Mining Recorder may grant to the holders of other claims such right of entry thereon as may be absolutely necessary for the working of their claims, upon such terms as may to him seem reasonable. He may also grant permits to miners to cut timber thereon for their own use.

38. Every free miner shall be entitled to the use of so much of the water naturally flowing through or past his claim, and not already lawfully appropriated, as shall, in the opinion of the Mining Recorder be necessary for the due working thereof, and shall be entitled to drain his own claim free of charge.

39. A claim shall be deemed to be abandoned and open to occupation and entry by any person when the same shall have remained unworked on working days, excepting during the close season, by the grantee thereof or by some person on his behalf for the space of seventy-two hours, unless sickness or other reasonable cause be shown to the satisfaction of the Mining Recorder, or unless the grantee is absent on leave given by the Mining Recorder, and the Mining Recorder, upon obtaining evidence satisfactory to himself, that this provision is not being complied with, may cancel the entry given for a claim.

40. If any cases arise for which no provision is made in these regulations, the provisions of the regulations governing the disposal of mineral lands other than coal lands, approved by His Excellency the Governor in Council on the 9th of November, 1889, or such other regulations as may be substituted therefor, shall apply.

For Forms referred to in these Regulations, see Appendix II.

REGULATIONS GOVERNING PLACER MINING ALONG THE NORTH
SASKATCHEWAN RIVER IN THE NORTH-WEST TERRITORIES.

Saturday, the 17th day of April, 1897.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR-GENERAL IN
COUNCIL.

Whereas it is represented that the regulations governing the disposal of placer mining claims, established by Order of the Governor-General in Council on the 9th November, 1889, have not operated satisfactorily in the disposal of mining locations on the North Saskatchewan River, in the North-West Territories:

His Excellency in virtue of the provisions of "The Dominion Lands Act," chapter 54 of the Revised Statutes of Canada, and by and with the advice of the Queen's Privy Council for Canada, is pleased to order that the following regulations for the disposal and governance of placer mining claims along the North Saskatchewan River, in the North-West Territories, shall be and the same are hereby adopted and established.

INTERPRETATION.

"Bar Diggings" shall mean any part of a river over which the water extends when the river is in its flooded state, and which is not covered at low water.

"Bench Claims" shall mean a part of the present bank of the river overlying a portion of what was originally a gravel bar in the river, and shall include "bar diggings."

"Legal Post" shall mean a stake standing not less than four feet above the ground and squared on four sides for at least one foot from the top. Both sides so squared shall measure at least four inches across its face. It shall also mean any stump or tree cut off and squared or faced to the above height and size.

"Close Season" shall mean the period of the year during which placer mining is generally suspended. The period to be fixed by the agent of Dominion lands in whose district a mining location is situated.

"Locality" shall mean a stretch of river within ten miles from any point on the river.

"Mineral" shall include all minerals whatsoever other than coal.

NATURE AND SIZE OF CLAIMS.

For "bar diggings" a strip of land 100 feet along high water mark, and thence extending into the river to the lowest water level.

"Bench claims" shall be a hundred feet along high water mark and shall extend forward to low water mark and back to the bank of the valley. Provided, however, that if the distance from high water mark to the bank of the valley exceeds 1,000 feet the length of the claim shall be confined to that number of feet.

Entry may be obtained for a "bar digging" or a bench claim upon complying with the following regulations:—

1. Any person who desires to work "bar diggings" may upon payment of a fee of \$1 to the agent of Dominion lands, obtain a free miner's certificate upon form "A" in the schedule to these regulations. This certificate will entitle the holder thereof to stake out "bar diggings" at any time in accordance with the provisions of these regulations, and work the same without further reference to the agent. It will be necessary, however, for the holder of the certificate to comply with the provisions of these regulations as to working the claim.

2. A "bench claim" shall be recorded with the agent of Dominion lands in whose district it is situated within three days after the location thereof, if it is located within ten miles of the agent's office. One extra day shall be allowed for making such record for every additional ten miles or fraction thereof.

3. An entry fee of \$5 shall be charged and the entry will be good for one year from the date thereof.

4. The sides of a claim for a "bar digging" shall be two parallel lines run as nearly as possible at right angles to the stream and shall be marked by four legal posts, one at each end of the claim at or about high water mark, also one at each end of the claim at or about the edge of the water. One of the posts at high water mark shall be legibly marked with the name of the miner and the date upon which the claim was staked.

5. The sides of a bench claim shall be parallel lines running as nearly as possible at right angles to the stream, and shall be marked by six legal posts, one at each side of the claim at or about low and high water marks, also one at each end of the claim upon the rear boundary thereof.

6. The boundaries of a claim beneath its surface shall be the vertical planes in which its surface boundaries lie.

7. Every claim shall be represented and *bona fide* worked by the holder thereof, or by some person on his behalf, continuously, as nearly as practicable, during working hours, and shall be deemed to be abandoned and absolutely forfeited when it shall remain unworked on working days by the holder thereof or some person on his behalf for a period of seventy-two hours, except during the close season, lay over or leave of absence, or during sickness, or for some other reasonable cause which shall be shown to the satisfaction of the agent of Dominion lands.

8. If a claim is not being worked in a *bona fide* manner, the agent of Dominion lands shall upon obtaining evidence to that effect satisfactory to himself, cancel the entry given for the location.

9. Any party of miners not exceeding four whose claims are adjoining may for the better development of their claims and upon being authorized to do so by the agent, work any one of the claims, and the work performed thereon shall be accepted as being done on each claim.

10. When steam power is employed continuously for dredging for bar or bench claims, these claims may be 200 feet in width, but they shall be the same length as already prescribed.

11. Miners holding two or four adjoining claims may for the purpose of operating them by steam power combine and work one of the claims and the work thereon will be sufficient to hold the remainder subject to the *bona fide* working of the claim in the manner already provided by these regulations. Provided that an agreement between the parties concerned is filed with the agent of Dominion lands and his consent to the agreement is obtained. The agreement shall provide that the owner of each location or his representative shall be employed in the work performed upon the claims. Provided also, that the agent of Dominion lands shall be furnished from

time to time with such particulars as he may require in relation to the operation of the claims.

12. When claims are to be operated by steam power the agent may give a period of sixty days from the date of recording the claim, to place machinery on the ground and to commence operations.

13. The forms of application for a grant for placer mining, and the grant of the same, shall be those contained in forms H and I in the schedule hereto.

14. The entry of every holder of a grant for placer mining, except in the cases provided for in section one of these regulations, must be renewed and his receipt relinquished and replaced every year, the entry fee being paid each time.

15. No miner shall receive a grant of more than one mining claim in the same locality, but the same miner may hold any number of claims by purchase or assignment.

16. Any miner or miners may sell, mortgage, or dispose of his or their claims, provided such disposal be registered with, and a fee of two dollars paid to the agent, who shall thereupon give the assignee a certificate in form J in the schedule hereto.

17. Every miner shall, during the continuance of his grant, have the exclusive right of entry upon his own claim, for the miner-like working thereof, and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom; but he shall have no surface rights therein, unless acquired by purchase; and the Superintendent of Mines may grant to the holders of adjacent claims such right of entry thereon as may be absolutely necessary for the working of their claims, upon such terms as may to him seem reasonable.

18. Every miner shall be entitled to the use of so much of the water naturally flowing through or past his claim, and not already lawfully appropriated, as shall, in the opinion of the Superintendent of Mines, be necessary for the due working thereof; and shall be entitled to drain his own claim free of charge.

19. If the land upon which a "bench claim" has been located is not the property of the Crown it will be necessary for the person

who applies for entry to furnish proof that he has acquired from the owner of the land the surface rights before entry can be granted.

20. If the occupier of the lands has not received a patent therefor, the purchase money of the surface rights must be paid to the Crown, and a patent of the surface rights will issue to the party who acquired the mining rights. The money as collected will either be refunded to the occupier of the land, when he is entitled to a patent therefor, or will be credited to him on account of payment for land.

21. When the party obtaining the mining rights to lands cannot make an arrangement with the owner or his agent or the occupant thereof for the acquisition of the surface rights, it shall be lawful for him to give notice to the owner or his agent or the occupier to appoint an arbitrator to act with another arbitrator named by him, in order to award the amount of compensation to which the owner or occupant shall be entitled. The notice mentioned in this section shall be according to a form to be obtained upon application from the agent of Dominion Lands for the district in which the lands in question lie, and shall, when practicable, be personally served on such owner, or his agent if known, or occupant; and after reasonable efforts have been made to effect personal service, without success, then such notice shall be served by leaving it at, or sending by registered letter to, the last place of abode of the owner, agent or occupant. Such notice shall be served, if the owner or agent resides in the district in which the land is situated, ten days, if out of the district and within the Province, twenty days, and if out of the Province, thirty days, before the expiration of the time limited in such notice. If the proprietor refuses or declines to appoint an arbitrator, or when, for any other reason, no arbitrator is appointed by the proprietor in the time limited therefor in the notice provided for by this section, the Agent of Dominion Lands for the district in which the lands in question lie, shall, on being satisfied by affidavit that such notice has come to the knowledge of such owner, agent or occupant, or that such owner, agent or occupant wilfully evades the service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, and that the notice was left at the last place of abode of such owner, agent or occupant, appoint an arbitrator on his behalf.

22. (a) All the arbitrators appointed under the authority of these regulations shall be sworn before a Justice of the Peace to the impartial discharge of the duties assigned to them; and they shall

forthwith proceed to estimate the reasonable damages which the owners or occupants of such lands, according to their several interests therein, shall sustain by reason of such prospecting and mining operations.

(b) In estimating such damages, the arbitrators shall determine the value of the land irrespective of any enhancement thereof from the existence of minerals therein.

(c) In case such arbitrators cannot agree, they may select a third arbitrator, and when the two arbitrators cannot agree upon a third arbitrator the Agent of Dominion Lands for the district in which the lands in question lie shall select such third arbitrator.

(d) The award of any two such arbitrators made in writing shall be final, and shall be filed with the Agent of Dominion Lands for the district in which the lands lie.

23. If any cases arise for which no provision is made in these regulations, the provisions of the regulations governing the disposal of mineral lands other than coal lands approved by His Excellency the Governor in Council on the 9th of November, 1889, shall apply.

LEASES.

24. A lease for five years may be granted to dredge the bed of the river below low water mark for a distance not exceeding five miles upon such terms as His Excellency the Governor in Council may designate. Provided that any person who may receive entry under these regulations shall be entitled to run tailings into the river at any point thereon also to mine two feet below the surface of the water at low water mark by putting in wing-dams whether he shall locate before or after the date of such lease.

For Schedule of Forms to these Regulations, see Appendix II.

REGULATIONS GOVERNING THE DISPOSAL OF MINERAL LANDS OTHER THAN COAL LANDS (CALLED "THE DOMINION MINING REGULATIONS").

1. These regulations shall be applicable to all Dominion lands, with the exception of those situated in the Province of British Col-

umbia, containing gold, silver, cinnabar, lead, tin, copper, iron, or other mineral deposit of economic value, with the exception of coal.

2. Any person or persons may explore vacant Dominion lands not appropriated or reserved by the Government for other purposes, and may search therein, either by surface or subterranean prospecting, for mineral deposits, with a view to obtaining under these regulations a mining location for the same; but no mining location or mining claim shall be granted until actual discovery has been made of the vein, lode or deposit of mineral or metal within the limits of the location or claim.

I.—QUARTZ MINING.

3. A location for mining, except for iron and mica on veins, lodes or ledges of quartz or other rock in place, shall not exceed the following dimensions: Its length shall not be more than 1,500 feet, its breadth not more than 600 feet; its surface boundaries shall be four straight lines and the side lines and end lines shall be parallel lines, except where prior locations may prevent, in which case it may be of such shape as may be approved by the Superintendent of Mines. Its length shall not be more than three times its breadth. Its boundaries beneath the surface shall be the vertical planes in which its surface boundaries lie.

4. Any person having discovered a mineral deposit may obtain a mining location therefor, under these regulations, in the following manner:

(a) He shall mark the location on the ground by placing at each of its four corners a wooden post, not less than four inches square, driven not less than eighteen inches into the ground, and showing that length above it. If the ground be too rocky to admit of so driving such posts, he shall build about each of them, to support it and keep it in place, a cairn or mound of stones, at least three feet in diameter at the base, and eighteen inches high. If the location be timbered, a line shall be run and well blazed joining the said posts. If it be not so timbered, and the ground is of such a nature that any one post cannot be seen from the ends of either of the lines which form the angle at which the said post is placed, posts flattened on two sides (such flattened portions facing the directions of the line) shall be planted or mounded along the side lines wherever necessary, so that no difficulty may be experienced by a subsequent prospector

or explorer in discovering or following the boundaries of any location. If the location be laid out with its boundaries due north and south and east and west, then he shall mark on the post designating the north-east angle of the location, legibly with a cutting instrument, or with coloured chalk, his name in full, the date of such marking, and the letters M. L. No. 1, to indicate that the post is mining location post No. 1. Proceeding next to the south-easterly angle of the location, he shall mark the post planted there with the letters M. L. No. 2, and his initials; next to the south-westerly angle of the location, the post planted at which he shall mark with the letters M. L. No. 3, and his initials; and lastly, to the north-westerly angle of the location, the post planted at which he shall mark with the letters M. L. No. 4, and his initials. If the location be laid by other than due north and south and east and west lines, the first mentioned post shall be the one at the northerly angle; the second the one at the easterly angle; the third the one at the southerly angle; and the fourth the one at the westerly angle. Furthermore, on the face of each post, which face shall in the planting thereof be turned towards the post which next follows it in the order in which they are named and numbered, there shall be marked in figures the number of yards distant to the next following post. If means of measurement are not available, the distance to be so marked on each of the posts may be that estimated. If the corner of a location falls in a ravine, bed of a stream, or any other situation where the character of the locality may render the planting of a post impossible, the said corner may be indicated by the erection at the nearest suitable point of a witness post, which in that case shall contain the same marks as those prescribed in this clause in regard to corner posts, together with the letters W. P., and an indication of the bearing and distance of the site of the true corner from such witness post.

(In this manner any subsequent prospector, informed of the regulations, will, on finding any one of the posts or mounds, be enabled to follow them all round, from one to another, and avoid encroachment, either in search of or in marking out another location in the vicinity for himself.)

(b) Having so marked out on the ground the location he desires, the claimant shall, within sixty days thereafter, file with the agent in the Dominion Lands Office for the district in which the location is situate, a declaration under oath, according to form A in the Schedule to these regulations (which may be sworn to before the said agent, or may have been previously sworn to before a justice of the

peace or Commissioner), setting forth the circumstances of his discovery, and describing, as nearly as may be, the locality and dimensions of the location marked out by him as aforesaid; and shall, along with such declaration, pay to the said agent an entry fee of five dollars.

(c) The agent, upon such payment being made, shall grant a receipt according to the form B in the Schedule to these regulations. This receipt shall authorize the claimant, his legal representatives or assignees, to enter into possession of the location applied for, and, subject to its renewal from year to year as hereinafter provided, during the term of five years from its date, to take therefrom and dispose of any mineral deposit contained within its boundaries: Provided that during each of the said five years after the date of such receipt he or they shall expend in actual mining operations on the claim at least one hundred dollars, and furnish to the agent of Dominion lands within each and every year a full detailed statement of such expenditure, which evidence shall be in the form of an affidavit corroborated by two reliable and disinterested witnesses; and the agent shall thereupon, subject to the payment by the claimant of a fee of five dollars, issue a receipt in the form C in the Schedule hereto, which shall entitle the claimant to hold the location for another year.

(d) Any party of miners, not exceeding four, whose claims are adjoining, and each of which has been entered within a period of three months, may, for the better development of their locations, and upon being authorized to do so by the agent, make upon any one of such locations, during the first and second years after entry, but not subsequently, the expenditure required by these regulations to be made upon each of the said locations. The authority herein provided for shall be in the form D in the Schedule hereto, and shall be granted by the agent upon application made in writing to that effect by each of the claimants interested, and payment of a fee of five dollars, upon which payment the agent shall also grant a receipt in the form E in the Schedule hereto: Provided, however, that the expenditure made upon any one location shall not be applicable in any manner or for any purpose to any other location.

5. At any time before the expiry of five years from the date of his entry for his mining location, the claimant shall be entitled to purchase the said location upon filing with the agent proof that he has expended not less than five hundred dollars in actual mining

operations on the same, and that he has in every other respect complied with the requirements of these regulations.

6. The price to be paid for a mining location shall be at the rate of five dollars per acre, cash.

7. On making the application to purchase a mining location, and paying the price therefor, as hereinbefore provided, the claimant shall also deposit with the agent the sum of fifty dollars, which shall be deemed payment by him to the Government for the survey of his location: and upon receipt of the plans and field notes, and the approval thereof by the Surveyor-General, a patent shall issue to the claimant in the form F in the Schedule hereto. If, on account of its remoteness or other cause, a mining location cannot, at the time of the deposit of fifty dollars by the applicant for the purpose, be surveyed by the Government for that sum, he shall be subject to the alternative of waiting until the employment of a surveyor by the Government on other work in the vicinity of the claim renders it convenient to have the survey made at a cost not exceeding fifty dollars, or of sooner procuring, at his own cost, its survey by a duly commissioned surveyor of Dominion lands, under instructions from the Surveyor-General: in the latter case, on receipt of the plans and field notes of the survey and approval thereof by the Surveyor-General, as hereinbefore provided, the claimant shall be entitled to receive his patent, and to have returned to him the fifty dollars deposited by him to defray the cost of survey.

8. Should the claimant, or his legal representatives as aforesaid, fail to prove within each year the expenditure prescribed, or having proved such expenditure, fail within the prescribed time to pay in full, and in cash to the agent, the price hereinbefore fixed for such mining location, and also to pay the sum of fifty dollars hereinbefore prescribed for the survey of his location, then any right on the part of the claimant or of his legal representatives in the location, or claim on his or their part to acquire it, shall lapse, and the location shall thereupon revert to the Crown, and shall be held, along with any immovable improvements thereon, for disposal, under these regulations, to any other person, or as the Minister of the Interior may direct.

(a) In cases where applications for mining locations are made in respect of lands within surveyed townships, they must conform to the regular system of surveys; that is, the location shall be either

legal subdivisions or regular subdivisions thereof; and prior to the application being granted it shall be necessary to stake out the location, at least approximately, on the ground, and it shall be surveyed by a Dominion Land Surveyor, acting under instructions from the Surveyor-General, within one year thereafter.

(b) If applications for mining locations are made within a township of which at least one boundary has been surveyed, to protect himself the discoverer may stake out his claim in conformity with these regulations; but before the issue of the patent, the claim shall, if required by the Minister of the Interior, be described by legal subdivisions or fractional portions thereof, upon a survey made by a Dominion Land Surveyor, acting under instructions from the Surveyor-General.

9. Where two or more persons lay claim to the same mining location, the right to acquire it shall be in him who can prove he was the first to discover the mineral deposit involved and to take possession, by demarcation in the manner prescribed in these regulations, of the location covering it.

10. Priority of discovery alone shall not give the right to acquire; but a person subsequently and independently discovering, who has complied with the other conditions prescribed in these regulations, shall take precedence of the first discoverer if the latter has failed to comply with the said other conditions: Provided, however, that in any case where it is proved that a claimant has, in bad faith, used the prior discovery of another, and fraudulently affirms that he made independent discovery and demarcation, he shall, apart from any other legal consequences, have no claim, and shall forfeit the deposit made with his application, and shall be absolutely debarred from obtaining another mining location.

11. Not more than one mining location shall be granted to any individual claimant upon the same lode or vein.

12. Where land is used or occupied for milling purposes, reduction works, or other purposes incidental to mining operations, either by the proprietor of a mining location or other person, such land may be applied for and patented, either in connection with or separate from a mining location, in the manner hereinbefore provided for the application for and the patenting of mining locations, and may be held in addition to any such mining location; but such additional land shall in no case exceed five acres in extent, and shall be paid for at the same rate as a mining location.

13. The Minister of the Interior may grant a location for the mining of iron and mica not exceeding 160 acres in area, which shall be bounded by due north and south and east and west lines, and its breadth and length shall be equal: Provided, that should any person making an application purporting to be for the purpose of mining iron, thus obtain, whether in good faith or fraudulently, possession of a valuable mineral deposit other than iron, his right in such deposit shall be restricted to the area hereinbefore prescribed for other minerals, and the rest of the location shall thereupon revert to the Crown for such disposition as the Minister may direct.

14. When there are two or more applicants for any mining location, no one of whom is the original discoverer or his assignee, the Minister of the Interior, if he sees fit to dispose of the location, shall invite their competitive tenders, or shall put it up to public tender or auction as he may deem expedient.

15. An assignment of the right to purchase a mining location shall be endorsed on the back of the receipt or certificate of assignment (Forms B and G, in the Schedule hereto) and the execution thereof shall be attested by two disinterested witnesses: upon the deposit of the receipt or certificate with such assignment executed and attested as herein provided, in the office of the agent, accompanied by a registration fee of two dollars, the agent shall give to the assignee a receipt in the form G in the Schedule hereto, which certificate shall entitle the assignee to all the rights and privileges of the original discoverer in respect of the claim assigned; and the said assignment shall be forwarded to the Minister of the Interior by the agent, at the same time and in like manner as his other returns respecting Dominion lands, and shall be registered in the Department of the Interior; and no assignment of the right to purchase a mining location which is not unconditional and in all respects in accordance with the provisions of this clause, and accompanied by the registration fee herein provided for, shall be recognized by the agent or registered in the Department of the Interior.

16. If application be made under the next preceding clause by the assignee of the right to purchase a mining location, and such claim is duly recognized and registered, as hereinbefore provided, such assignee shall by complying with these regulations become entitled to purchase the location for the price and on the terms prescribed thereby.

II.—PLACER MINING.

17. The regulations hereinbefore laid down in respect of Quartz Mining shall be applicable to Placer Mining so far as they relate to entries, entry fees, assignments, marking of locations, agents' receipts, and generally where they can be applied, save and except as otherwise herein provided.

NATURE AND SIZE OF CLAIMS.

18. The size of claims shall be as follows:—

(a) For "bar diggings," a strip of land 100 feet wide at high water mark, and thence extending into the river to its lowest water level.

(b) For "dry diggings," 100 feet square.

(c) "Creek and river claims" shall be 100 feet long, measured in the direction of the general course of the stream, and shall extend in width from base to base of the hill or bench on each side, but when the hills or benches are less than 100 feet apart the claim shall be 100 feet square: Provided, however, that in any case where the distance from base to base of the hill or bench exceeds ten chains, such claims shall be laid out in areas of ten acres each, the boundaries of such areas to be due north and south and east and west lines, and if within surveyed territory the said area of ten acres shall consist of one-fourth of a legal subdivision, and shall be marked on the ground in the manner prescribed by these regulations for marking quartz mining locations: Provided further, that any such claim intersected by a creek or river, shall, in addition to the stakes at the four corners thereof, have the points at which its boundaries may be intersected by the high water mark of the creek or river, on both sides of the creek or river, designated by posts of the same size which shall be driven into the ground the same depth and showing the same length above it as the posts prescribed by these regulations in respect of quartz mining locations, and the said posts shall have marked upon them legibly, with a cutting instrument or with coloured chalk, the name of the claimant in full and the date of such marking.

(d) "Bench claims" shall be 100 feet square.

(e) Every claim on the face of any hill, and fronting on any natural stream or ravine, shall have a frontage of 100 feet drawn

parallel to the main direction thereof, and shall be laid out, as nearly as possible, in the manner prescribed by section 4 of these regulations.

(f) If any person or persons shall discover a new mine, and such discovery shall be established to the satisfaction of the agent, claims of the following size, in dry, bar, bench, creek, or hill diggings, shall be allowed:—

To one discoverer	300 feet in length.	
To a party of two	600	"
" three	800	"
" four	1,000	"

and to each member of a party beyond four in number, a claim of the ordinary size only.

A new stratum of auriferous earth or gravel, situated in a locality where the claims are abandoned, shall for this purpose be deemed a new mine, although the same locality shall have been previously worked at a different level; and dry diggings discovered in the vicinity of bar diggings shall be deemed a new mine, and *vice versa*.

RIGHTS AND DUTIES OF MINERS.

19. The forms of application for a grant for placer mining, and the grant of the same, shall be those contained in forms H and I in the schedule hereto.

20. The entry of every holder of a grant for placer mining must be renewed and his receipt relinquished and replaced every year, the entry fee being paid each time.

21. No miner shall receive a grant of more than one mining claim in the same locality, but the same miner may hold any number of claims by purchase, and any number of miners may unite to work their claims in common upon such terms as they may arrange, provided such agreement be registered with the agent, and a fee of five dollars paid for each registration.

22. Any miner or miners may sell, mortgage, or dispose of his or their claims, provided such disposal be registered with and a fee of two dollars paid to the agent, who shall thereupon give the assignee a certificate in form J in the schedule hereto.

23. Every miner shall, during the continuance of his grant, have the exclusive right of entry upon his own claim, for the miner-like working thereof and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom; but he shall have no surface rights therein; and the Superintendent of Mines may grant to the holders of adjacent claims such right of entry thereon as may be absolutely necessary for the working of their claims, upon such terms as may to him seem reasonable.

24. Every miner shall be entitled to the use of so much of the water naturally flowing through or past his claim, and not already lawfully appropriated, as shall, in the opinion of the Superintendent of Mines, be necessary for the due working thereof; and shall be entitled to drain his own claim free of charge.

25. A claim shall be deemed to be abandoned and open to occupation and entry by any person when the same shall have remained unworked on working days by the grantee thereof for the space of seventy-two hours, unless sickness or other reasonable cause be shown, or unless the grantee is absent on leave.

26. A claim granted under these regulations shall be continuously, and in good faith, worked, except as otherwise provided, by the grantee thereof or by some person on his behalf.

27. In tunnelling under hills, on the frontage of which angles occur, or which may be of an oblong or elliptical form, no party shall be allowed to tunnel from any of the said angles, or from either end of such hills, so as to interfere with parties tunnelling from the main frontage.

28. Tunnels and shafts shall be considered as belonging to the claim for the use of which they are constructed, and as abandoned or forfeited by the abandonment or forfeiture of the claim itself.

29. For the more convenient working of back claims on benches or slopes, the Superintendent of Mines may permit the owners thereof to drive a tunnel through the claims fronting on any creek, ravine, or water-course, upon such terms as he may deem expedient.

ADMINISTRATION.

30. In case of the death of any miner while entered as the holder of any mining claim, the provisions as to abandonment shall not apply either during his last illness or after his decease.

31. The Minister of the Interior shall take possession of the mining property of the deceased, and may cause such mining property to be duly worked, or dispense therewith, at his option; and he shall sell the property by private sale, or, after ten days' notice thereof, by public auction, upon such terms as he shall deem just, and out of the proceeds pay all costs and charges incurred thereby, and pay the balance, if any, to the legal representatives of the said deceased miner.

32. The Minister of the Interior, or any person authorized by him, shall take charge of all the property of deceased miners until the issue of letters of administration.

III.—BED-ROCK FLUMES.

33. It shall be lawful for the Minister of the Interior, upon the application hereinafter mentioned, to grant to any bed-rock flume company, for any term not exceeding five years, exclusive rights of way through and entry upon any mining ground for the purposes of construction, laying and maintaining bed-rock flumes.

34. Three or more persons may constitute themselves into a bed-rock flume company; and every application by them for such grant shall state the names of the applicants and the nature and extent of the privileges sought to be acquired. Ten full days' notice thereof shall be given between the months of June and November, and between the months of November and June one month's notice shall be given, by affixing the same to a post planted in some conspicuous part of the ground or to face of the rock, and a copy thereof conspicuously upon the inner walls of the land office of the district. Prior to such application, the ground included therein shall be marked out in the manner prescribed in sub-clause (a) of clause four of these regulations. It shall be competent for any person to protest before the agent within the times hereinbefore prescribed for the notice of such application, but not afterwards, against such application being granted. Every application for a grant shall be accompanied by a deposit of \$100, which shall be returned if the application be refused, but not otherwise.

35. Every such grant shall be in writing, in the form K, in the schedule hereto.

36. The holders of claims through which the line of the company's flume is to run may put in a bed-rock flume in their claims to connect with the company's flume, upon giving the company ten

days' notice in writing to that effect; but they shall maintain the like grade, and build their flume as thoroughly, and of as strong materials, as that built by such company.

37. Every bed-rock flume company shall lay at least fifty feet of flume during the first year and one hundred feet annually thereafter, until completion of the flume.

38. Any miners lawfully working any claims where a bed-rock flume exists, shall be entitled to tail their sluices, hydraulics and ground sluices into such flume, but so as not to obstruct the free working of such flume by rocks, stones, boulders or otherwise.

39. Upon a grant being made to any bed-rock flume company, the agent shall register the same, and the company shall pay for such registration a fee of \$10. They shall also pay in advance an annual rent of \$10 for each quarter of a mile of right of way legally held by them.

IV.—DRAINAGE OF MINES.

40. The Minister of the Interior may grant to any person or persons permission to run a drain or tunnel for drainage purposes through any occupied mining land, and may give such persons exclusive rights of way through and entry upon any mining ground for any term not exceeding five years, for the purpose of constructing a drain or drains for the drainage thereof.

41. The grantee shall compensate the owners of lands or holders of claims entered upon by him for any damage they may sustain by the construction of such tunnel or drain, and such compensation, if not agreed upon, shall be settled by the Superintendent of Mines, and be paid before such drain or tunnel is constructed.

42. Such drain or tunnel, when constructed, shall be deemed to be the property of the person or persons by whom it shall have been so constructed.

43. Every application for a grant shall state the names of the applicants, the nature and extent of the proposed drain or drains, the amount of toll (if any) to be charged, and the privileges sought to be acquired, and shall, save where the drain is intended only for the drainage of the claim of the person constructing the same, be accompanied by a deposit of \$25, which shall be refunded in case the appli-

cation is refused, but not otherwise. Notice of the application shall be given and protests may be made in the same manner as provided in regard to bed-rock flumes.

44. The grant of the right of way to construct drains and tunnels shall be made in the form L in the Schedule hereto. The grant shall be registered by the grantee in the office of the agent, to whom he shall at the time pay a registration fee of \$5, or, if the grant gives power to collect tolls, a fee of \$10. An annual rent of \$10 shall be paid, in advance, by the said grantee for each quarter of a mile of right of way legally held by him, save where the drain shall be for the purpose of draining only the claim of the person constructing the same.

V.—DITCHES.

45. The Minister of the Interior may, upon application hereinafter mentioned, grant to any person or persons, for any term not exceeding five years, or in special cases for such length of time as he may determine, the right to divert and use the water from any stream or lake, at any particular part thereof, and the right of way through and entry upon any mining ground, for the purpose of constructing ditches and flumes to convey such water: Provided always, that every such grant shall be deemed as appurtenant to the mining claim in respect of which it has been obtained, or is required in connection with reduction works, sampling works, stamp mills, concentrating works, or other works connected with mining operations; and whenever the claim shall have been worked out or abandoned, or whenever the occasion for the use of such water upon the claim or in connection with such works shall have permanently ceased, the grant shall cease and determine.

46. Twenty days' notice of the application shall be given, in accordance with Form M in the schedule to these regulations, by affixing the same to a post planted in some conspicuous part of the ground, and a copy thereof conspicuously posted upon the inner walls of the land office for the district, and any person may protest within such twenty days, but not afterwards, against such application being wholly or partially granted.

47. Every application for a grant of water exceeding 200 inches shall be accompanied by a deposit of \$25, which shall be refunded in case the application is refused, but not otherwise.

48. Every such application shall state the names of the applicants, the name or description of the stream or lake to be diverted, the quantity of water to be taken, the locality for its distribution, the price (if any) to be charged for the use of such water, and the time necessary for the completion of the ditch. The grant shall be in the form N in the schedule hereto.

49. Every grant of a water privilege on occupied creeks shall be subject to the rights of such miners as shall, at the time of such grant, be working on the stream above or below the ditch head, and of any other persons lawfully using such water for any purpose whatsoever.

50. If, after the grant has been made, any miner or miners locate and *bona fide* work any mining claim below the ditch head, on any stream so diverted, he or they collectively shall be entitled to 40 inches of water if 200 inches be diverted, and 60 inches if 300 inches be diverted, and no more, except upon paying to the owner of the ditch, and all other persons interested therein, compensation equal to the amount of damage sustained by the diversion of such extra quantity of water as may be required; and in computing such damage, the loss sustained by any claims using water therefrom, and all other reasonable losses, shall be considered.

51. No person shall be entitled to a grant of the water of any stream for the purpose of selling the water to present or future claim holders on any part of such stream. The Minister of the Interior may, however, grant such privileges as he may deem just, when such ditch is intended to work bench or hill claims fronting on any such stream, provided that the rights of miners then using the water so applied for be protected.

52. The Minister of the Interior may, on the report of the Superintendent of Mines that such action is desirable, order the enlargement or alterations of any ditch, and fix the compensation (if any) to be paid by parties to be benefited thereby.

53. Every owner of a ditch or water privilege shall take all reasonable means for utilizing the water granted to him; and, if he wilfully take and waste any unreasonable quantity of water, the Minister may, if such offence be persisted in, declare all rights to the water forfeited.

54. The owner of any ditch or water privilege may distribute the water to such persons and on such terms as he may deem advis-

able, within the limits mentioned in this grant: Provided always, that such owner shall be bound to supply water to all miners who make application therefor in a fair proportion, and shall not demand more from one person than from another, except where the difficulty of supply is enhanced.

55. Any person desiring to bridge any stream, claim or other place, for any purpose, or to mine under or through any ditch or flume, or to carry water through or over any land already occupied, may, in proper cases, do so with the written sanction of the Superintendent of Mines. In all such cases the right of the party first in possession shall prevail so as to entitle him to compensation if the same be just.

56. In measuring water in any ditch or sluice, the following rules shall be observed: The water taken into a ditch or sluice shall be measured at the ditch or sluice head; no water shall be taken into a ditch or sluice except in a trough placed horizontally at the place at which the water enters it, and which trough shall be extended two feet beyond the orifice for the discharge of the water; one inch of water shall mean the quantity that will pass through a rectangular orifice two inches high by half an inch wide, with a constant head of seven inches above the upper side of the orifice.

57. Whenever it shall be intended, in forming or upholding any ditch, to enter upon and occupy any part of an entered claim, or to dig or loosen any earth or rock, within four feet of any ditch not belonging solely to the registered owner of such claim, three days' notice, in writing, of such intention shall be given before entering or approaching within four feet of such other property.

58. Any person engaged in the construction of any road or work may, with the sanction of the Minister of the Interior, cross, divert or otherwise interfere with any ditch, water privilege or other mining rights whatsoever, for such period as the Minister shall approve.

59. The Minister shall order what compensation for every such damage or interference shall be paid, and when, and to whom, and whether any and what works, damaged or affected by such interference as aforesaid, shall be replaced by flumes or otherwise repaired by the person or persons causing any such damage.

60. The owners of any ditch, water privilege, or mining right shall at their own expense, construct, secure and maintain all culverts

necessary for the passage of waste and superfluous water flowing through or over any such ditch, water privilege or right.

61. The owners of any ditch or water privilege shall construct and secure the same in a proper and substantial manner, and maintain the same in good repair, to the satisfaction of the Superintendent of Mines, and so that no damage shall occur to any road or work in its vicinity from any part of the works of such ditch, water privilege or right.

62. The owners of any ditch, water privilege or right, shall be liable, and shall make good in such manner as the Superintendent of Mines shall determine, all damages which may be occasioned by or through any part of the works of such ditch, water privilege, or right, breaking or being imperfect.

63. Nothing herein contained shall be construed to limit the right of the Lieutenant-Governor of the North-west Territories in Council, or of the proper authority in any Province containing Dominion lands, to lay out, from time to time, public roads across, through, along, or under any ditch, water privilege or mining right, without compensation.

VI.—GENERAL PROVISIONS.

INTERPRETATION.

64. In these regulations the following expressions shall have the following meanings respectively, unless inconsistent with the context:—

“Minister” shall mean the Minister of the Interior.

“Agent” or “Local Agent” shall mean the Agent of Dominion Lands for the district, or other officer appointed by the Government for the particular purpose referred to.

“Mineral” shall include all minerals whatsoever other than coal.

“Close Season” shall mean the period of the year during which placer mining is generally suspended.

“Miner” shall mean a person holding a mining location or a grant for placer mining.

"Claim" shall mean the personal right of property in a placer mine or diggings during the time for which the grant of such mine or diggings is made.

"Claimant" shall mean a person who has obtained an entry for a mining location with a view to patent.

"Bar Diggings" shall mean any mine over which a river extends when in its flooded state.

"Dry Diggings" shall mean any mine over which a river never extends.

The mines on benches shall be known as "Bench Diggings," and shall, for the purpose of defining the size of such claims, be excepted from "Dry Diggings."

"Streams and Ravines" shall include water-courses, whether usually containing water or not, and all rivers, creeks and gulches.

"Ditch" shall include a flume or race, or other artificial means for conducting water by its own weight, to be used for mining purposes.

"Ditch Head" shall mean the point in a natural water-course or lake where water is first taken into a ditch.

"Placer Mining" shall mean the working of all forms of deposits, excepting veins of quartz or other rock in place.

"Quartz Mining" shall mean the working of veins of quartz or other rock in place.

"Location" shall mean the land entered by, or patented to, any person for the purpose of quartz mining.

HEARING AND DECISION OF DISPUTES.

65. The Superintendent of Mines shall have power to hear and determine all disputes in regard to mining property arising within his district, subject to appeal by either of the parties to the Commissioner of Dominion Lands.

66. No particular forms of procedure shall be necessary, but the matter complained of must be properly expressed in writing, and a copy of the complaint shall be served on the opposite party not less than *seven* days before the hearing of the said complaint.

67. The complaint may, by leave of the Superintendent of Mines, be amended at any time before or during the proceedings.

68. The complainant shall, at the time of filing his complaint, deposit therewith a bond-fee of \$20, which shall be returned to him if the complaint proves to have been well founded, and not otherwise, except for special cause, by direction of the Minister of the Interior.

69. In the event of the decision of the Superintendent of Mines being made the subject of an appeal to the Commissioner of Dominion Lands, the appellant shall, at the time of lodging the appeal, deposit with the agent a bond-fee of \$20, which shall be returned to the said appellant if his appeal proves to have been well founded, and not otherwise, except for special cause, by direction of the Minister of the Interior.

70. The appeal must be in writing and must be lodged with the Superintendent of Mines not more than three days after his decision has been communicated in writing to all the parties interested, and must state the grounds upon which the said decision is appealed from.

71. If the Commissioner of Dominion Lands decides that it is necessary to a proper decision of the matter in issue to have an investigation on the ground, or, in cases of disputed boundaries or measurements, to employ a surveyor to measure or survey the land in question, the expenses of the inspection or re-measurement or re-survey, as the case may be, shall be borne by the litigants, who shall pay into the hands of the said Commissioner, in equal parts, such sum as he may think sufficient for the same, before it takes place; otherwise, it shall not proceed, and the party who refuses to pay such sum shall be adjudged in default. The said Commissioner shall subsequently decide in what proportion the said expense should be borne by the parties respectively, and the surplusage, if any, shall then be returned to the parties, as he may order.

72. All bond-fees adjudged as forfeited and all payments retained under the last preceding section, shall, as soon as decision has been rendered, and all entry and other fees or moneys shall, as soon as they have been received by him, be paid by the said agent or Commissioner to the credit of the Receiver-General in the same manner as other moneys received by him on account of Dominion Lands.

LEAVE OF ABSENCE.

73. The agent in each district shall, under instructions from the Minister of the Interior, declare the close season in his district.

74. Each holder of a mining location or of a grant for placer mining shall be entitled to be absent from his mining location or diggings and to suspend work thereon during the close season.

75. The agent shall have power to grant leave of absence to the holder of a mining location or grant for placer mining pending the decision of any dispute in which he is concerned under these regulations.

76. In cases where water is necessary to the continuance of mining operations, and the supply of water is insufficient, the Superintendent of Mines shall have power to grant leave of absence to the holder of the grant during such insufficiency, but no longer, except by permission of the Minister of the Interior.

77. Any miner or miners shall be entitled to leave of absence for one year from his or their diggings, upon proving to the satisfaction of the Superintendent of Mines that he or they has or have expended on such diggings, in cash, labour or machinery, an amount of not less than \$200 on each of such diggings, without any return of gold or other minerals in reasonable quantities for such expenditure.

78. The time reasonably occupied by the locator of a claim in going to, and returning from, the office of the agent or Superintendent of Mines to enter his claim, or for other purposes prescribed by these regulations, shall not be counted against him, but he shall, in such cases, be deemed to be absent on leave.

MISCELLANEOUS.

79. The Minister of the Interior shall, from time to time, as he may think fit, declare the boundaries of mineral and mining districts, and shall cause a description of the same to be published in the *Canada Gazette*.

80. The Minister of the Interior may direct mineral and mining locations to be laid out within such districts wherever, from report of the Director of the Geological Survey, or from other information, he

has reason to believe there are mineral deposits of economic value, and may sell the same to applicants therefor, who, in his opinion, are able and intend in good faith to work the same; or he may, from time to time, cause the said locations to be sold by public auction or tender. Such sales shall be for cash, and at prices in no case lower than those prescribed for locations sold to original discoverers, and shall otherwise be subject to all the provisions of these regulations.

81. The Minister of the Interior may grant to any person or persons who have a mining location and are actively developing the same, an additional location adjacent to and not exceeding it in area, provided the person or persons holding such location shall show to the satisfaction of the Minister of the Interior that the vein or lode being developed on the location will probably extend outside of either of the vertical lines forming the side boundaries of the location before it has reached the depth at which it cannot be profitably mined.

82. Persons desirous of obtaining quarries for stone on vacant Dominion Lands may do so under these regulations; but the Minister of the Interior may require the payment of a royalty not exceeding five per cent. on account of the sales of the product of such quarries, or the land may be sold not subject to such royalty at such price as may be determined.

83. Returns shall be made by the grantee, sworn to by him, or by his agent or other employee in charge of the mine, at monthly or other such intervals as may be required by the Minister of the Interior, of all products of his mining location and of the price or amount he received for the same.

84. The Minister of the Interior shall have the power to summarily order any mining works to be so carried on as not to interfere with or endanger the safety of the public, any public work or highway, or any mining property, mineral lands, mining claims, bed-rock drains or flumes; and any abandoned works may, by his order, be either filled up or guarded to his satisfaction, at the cost of the parties who may have constructed the same, or in their absence upon such terms as he shall think fit.

85. The Superintendent of Mines, acting under instructions, to be from time to time issued by the Minister of the Interior, shall cause to be laid out, at the expense of the person or persons applying for the same, a space of ground for deposits of leavings and deads from any tunnel, claim or mining ground.

FORFEITURE.

86. In the event of the breach of these regulations, or any of them, by any person holding a grant for Quartz or Placer Mining from the Crown other than Crown Patents, or from the Minister of the Interior, or from any duly authorized officer of Dominion Lands, such right or grant shall be absolutely forfeited *ipso facto*, and the person so offending shall be incapable thereafter of acquiring any such right or grant, unless for special cause it is otherwise decided by the Minister of the Interior.

For Schedule to Mining Operations, see Appendix II.

REGULATIONS GOVERNING THE ISSUE OF LEASES TO DREDGE FOR
MINERALS IN THE BEDS OF RIVERS IN THE PROVISIONAL
DISTRICT OF THE YUKON, NORTH-WEST TERRITORIES.

(Approved of by the Order in Council No. 125, of the 18th January,
1898.)

The following regulations are adopted for the issue of leases to persons or companies who have obtained a free miner's certificate in accordance with the provisions of the regulations governing placer mining in the Provisional District of Yukon, to dredge for minerals other than coal in the submerged beds or bars of rivers in the Provisional District of Yukon, in the North-West Territories:—

1. The lessee shall be given the exclusive right to subaqueous mining and dredging for all minerals, with the exception of coal, in and along an unbroken extent of five miles of a river following its sinuosities, to be measured down the middle thereof, and to be described by the lessee in such manner as to be easily traced on the ground; and although the lessee may also obtain as many as five other leases, each for an unbroken extent of five miles of a river, so measured and described, no more than six such leases shall be issued in favour of an individual or company, so that the maximum extent of river in and along which any individual or company shall be given the exclusive right above mentioned, shall under no circumstances exceed thirty miles. The lease shall provide for the survey of the leasehold under instructions from the Surveyor-General, and for the filing of the returns of survey in the Department of the Interior within one year from the date of the lease.

2. The lease shall be for a term of twenty years, at the end of which time all rights vested in, or which may be claimed by the lessee under his lease, are to cease and determine. The lease may be renewable, however, from time to time thereafter in the discretion of the Minister of the Interior.

3. The lessee's right of mining and dredging shall be confined to the submerged beds or bars in the river below low water mark, that boundary to be fixed by its position on the first day of August in the year of the date of the lease.

4. The lease shall be subject to the rights of all persons who have received or who may receive entries for claims under the Placer Mining Regulations.

5. The lessee shall have at least one dredge in operation upon the five miles of river leased to him, within two seasons from the date of his lease, and if during one season when operations can be carried on, he fails to efficiently work the same to the satisfaction of the Minister of the Interior, the lease shall become null and void unless the Minister of the Interior shall otherwise decide. Provided that when any company or individual has obtained more than one lease, one dredge for each fifteen miles or portion thereof shall be held to be compliance with this regulation.

6. The lessee shall pay a rental of \$100 per annum for each mile of river so leased to him. The lessee shall also pay to the Crown a royalty of ten per centum on the output in excess of \$15,000, as shown by sworn returns to be furnished monthly by the lessee to the Gold Commissioner during the period that dredging operations are being carried on; such royalty, if any, to be paid with each return.

6a. The lessee who is the holder of more than one lease shall be entitled to the exemption as to royalty provided for by the next preceding regulation to the extent of \$15,000 for each five miles of river for which he is the holder of a lease; but the lessee under one lease shall not be entitled to the exemption as to royalty provided by the next two preceding regulations, where the dredge or dredges used by him have been used in dredging by another lessee, or in any case in respect of more than thirty miles.

7. The lessee shall be permitted to cut free of all dues, on any land belonging to the Crown, such timber as may be necessary for

the purposes of his lease, but such permission shall not extend to timber which may have been heretofore or may hereafter be granted to other persons or corporations.

8. The lessee shall not interfere in any way with the general right of the public to use the river in which he may be permitted to dredge, for navigation and other purposes; the free navigation of the river shall not be impeded by the deposit of tailings in such manner as to form bars or banks in the channel thereof, and the current or stream shall not be obstructed in any material degree by the accumulation of such deposits.

9. The lease shall provide that any person who has received or who may receive entry under the Placer Mining Regulations shall be entitled to run tailings into the river at any point thereon, and to construct all works which may be necessary for properly operating and working his claim. Provided that it shall not be lawful for such person to construct a wing-dam within one thousand feet from the place where any dredge is being operated, nor to obstruct or interfere in any way with the operation of any dredge.

10. The lease shall reserve all roads, ways, bridges, drains, and other public works, and all improvements now existing, or which may hereafter be made in, upon or under any part of the river, and the power to enter and construct the same, and shall provide that the lessee shall not damage nor obstruct any public ways, drains, bridges, works and improvements now or hereafter to be made upon, in, over, through, or under the river; and that he will substantially bridge or cover and protect all the cuts, flumes, ditches and sluices, and all pits and dangerous places at all points where they may be crossed by a public highway or frequented path or trail, to the satisfaction of the Minister of the Interior.

11. That the lessee, his executors, administrators, or assigns, shall not nor will assign, transfer or sublet the demised premises, or any part thereof, without the consent in writing of the Minister first had and obtained.

REGULATIONS DATED 21ST JULY, 1897, AS AMENDED BY REGULATIONS DATED 29TH JULY, 1897; 18TH JANUARY, 1898, AND 28TH FEBRUARY, 1898, RESPECTIVELY, RESPECTING THE ISSUE OF LEASES TO DREDGE FOR MINERALS IN THE SUBMERGED BEDS OF RIVERS IN MANITOBA AND THE NORTH-WEST TERRITORIES.

The Agent of Dominion Lands in whose district the portion of the river desired to be leased is situated is hereby authorized to accept applications, and leases may be issued by the Minister of the Interior upon the following conditions:—

1. The lessee shall be given the exclusive right to subaqueous mining and dredging for minerals, with the exception of coal, in and along an unbroken extent of five miles of the river following its sinuosities, and to be described by the applicant in such manner as to be easily traced on the ground.

2. The lease shall be for a term of twenty years, at the end of which time all rights vested in, or which may be claimed by the lessee are to cease and determine. The lease may be renewable, however, from time to time thereafter in the discretion of the Minister of the Interior.

3. The lessee's right to mining and dredging shall be confined to the submerged bed or bars in the river, below low water mark.

4. The lease shall be subject to the rights of all persons who have received or who may receive entries for bar diggings or bench claims under the mining regulations.

5. The lessee shall have a dredge in operation within one year from the date of the lease, and if during one season, when operations can be carried on, he fails to efficiently work the same, the lease shall become null and void, unless the Minister of the Interior shall decide otherwise.

6. The lessee shall pay a rental of \$50 per annum for each dredge used, such rental to be paid in advance, and to commence to accrue on the date upon which the lease is issued. He shall also pay to the Crown a royalty of two and one-half per cent. on the output after it exceeds \$10,000.00, as shown by sworn returns to be fur-

nished monthly by the lessee during the period that dredging operations are being carried on. Said royalty to be paid monthly.

7. The lessee shall not interfere in any way with the general right of the public to use the river in which he may be permitted to dredge, for navigation and other purposes; the free navigation of the river shall not be impeded by the deposit of tailings in such manner as to form bars or banks in the channel thereof; and the current or stream shall not be obstructed in any material degree by the accumulation of such deposits.

8. The lease shall provide that any one who has or who may receive entry under the mining regulations shall be entitled to run tailings into the river at any point thereon, also to mine two feet below the surface of the water at low water mark by putting in wing dams.

9. The lease to be issued shall reserve all roads, ways, bridges, drains, and all other public works and improvements now existing, or which may hereafter be made in, upon or under any part of the river, and the power to enter and construct the same. It shall also provide that the lessee shall not damage nor obstruct any public way, drains, bridges, works and improvements now or hereafter to be made upon, in, over, through, or under the river; and that he will substantially bridge or cover and protect all the cuts, flumes, ditches, and sluices, and all pits and dangerous places at all points where they may be crossed by a public highway or frequented path or trail, to the satisfaction of the Minister of the Interior.

Amended the 29th day of July, 1897, by providing that the said regulations shall not apply to the Yukon River and its tributaries and all creeks and rivers connecting therewith in the North-West Territories.

Amended 18th January, 1898, by providing that the said regulations of 21st July, 1897, "shall only apply to rivers in Manitoba and the North-West Territories outside of the Provisional District of Yukon; and further, that said regulations shall be and the same are hereby amended by providing that not more than two leases, each including an unbroken extent of five miles of a river, shall be issued in favour of any one applicant or company."

Amended 28th February, 1898, by providing "that all persons obtaining leases to dredge for minerals in the submerged beds of rivers in Manitoba and the North-West Territories outside of the

Provisional District of Yukon, and all persons in the employ of such persons engaged in dredging upon such rivers shall be required to take out free miners' certificates, in the manner provided for in the regulations governing placer mining in the said Provisional District of Yukon, and that in default of such certificates being taken out and kept in force such leases shall be forfeited."

REGULATIONS FOR THE SURVEY, ADMINISTRATION, DISPOSAL AND MANAGEMENT OF DOMINION LANDS WITHIN THE FORTY-MILE RAILWAY BELT, IN THE PROVINCE OF BRITISH COLUMBIA, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL, ON THE 17TH SEPTEMBER, 1889, IN FORCE FROM AND AFTER THE 13TH MARCH, 1890. WITH ADDITIONS AND AMENDMENTS PROVIDED BY ORDERS IN COUNCIL DATED, RESPECTIVELY, THE 13TH NOVEMBER, 1890, THE 12TH DECEMBER, 1891, THE 21ST MARCH, 1892, AND THE 10TH NOVEMBER, 1893.

MINING AND MINING LANDS.

Sec. 31. Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, may be disposed of in such manner and on such terms and conditions as may, from time to time, be fixed by the Governor in Council by regulations to be made in that behalf.

Sec. 32. It is hereby declared that no grant from the Crown of lands in freehold, or for any less estate, has operated or will operate as a conveyance of the minerals therein, unless the same are expressly conveyed in such grant.

DITCHES.

Sec. 33. The provisions of "The Dominion Mining Regulations," having reference to the diversion and use of the water from any stream or lake, and the rights of way necessary for the construction of flumes and ditches to convey such water, shall apply to the diversion and use of the water from any stream or lake, and the rights of way necessary to the conveyance thereof in respect of the irrigation of agricultural lands; Provided, however, that the forms M, N and O, in the Schedule to these regulations, shall be used.

For Forms, see Appendix II.

AS TO HOMESTEAD ENTRIES AND SALES AFFECTING TIMBERED LANDS, THE PROPERTY OF THE DOMINION, WITHIN THE RAILWAY BELT IN THE PROVINCE OF BRITISH COLUMBIA.

All the lands within the Railway Belt in the Province of British Columbia are open for homestead entry, including (by Order in Council of 11th July, 1895,) the agricultural lands in the New Westminster Land District.

By R. S. C. (1886), c. 56, s. 14. All merchantable timber growing or being upon any land entered or sold within the limits of Dominion lands in British Columbia, and all gold, silver, copper, lead, iron, petroleum, coal or other mines or minerals shall be considered as reserved from the said land, and shall be the property of Her Majesty.

“THE INDIAN ACT.”¹ (Part.)

4. The Minister of the Interior, or the head of any other Department appointed for that purpose by the Governor in Council, shall be the Superintendent-General of Indian Affairs, and shall, as such, have the control and management of the lands² and property of the Indians in Canada. 46 Vict. c. 6, s. 1.

26. Every person, or Indian other than an Indian of the band to which the reserve belongs, who, without the license in writing of the Superintendent-General, or of some officer or person deputed by him for that purpose, cuts, carries away, or removes from any of the said land, roads or allowances for roads, in the said reserve, any of the trees, saplings, shrubs, underwood, timber or hay thereon, or removes any of the stone, soil, minerals, metals or other valuables from the said land, roads or allowances for roads, shall, on conviction thereof before any stipendiary magistrate, police magistrate, or any two justices of the peace or Indian agent, incur

(c) For removing any of the stone, soil, minerals, metals or other valuables aforesaid, a penalty of twenty dollars, and the costs of prosecution in each case.

(5) Nothing herein contained shall be construed to prevent the Superintendent-General from issuing a license to any person or Indian to cut and remove trees, wood, timber and hay, or to quarry and remove stone and gravel on and from the reserve, if he or his agent, acting by his instructions, first obtains the consent of the band thereto in the ordinary manner, as hereinafter provided. 43 Vict. c. 28, s. 27, part; 45 Vict. c. 30, s. 3; 47 Vict. c. 27, s. 7.

27. (Provides for the punishment of Indians trespassing on land of another Indian, or removing certain things, including "any of the stone, soil, minerals, metals or other valuables," etc., except same be "for the immediate use of himself and his family.")

41. All Indian lands, which are reserves or portions of reserves, surrendered or to be surrendered to Her Majesty, shall be deemed to be held for the same purposes as before the passing of this Act, and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Act. 43 Vict. c. 28, s. 40.

¹ R. S. C. (1886) c. 43.

² "Indian Lands" is defined by s. 2, ss. (iii), to mean "any reserve or portion of a reserve which has been surrendered to the Crown."

INDIAN LANDS, CONSOLIDATED MINING REGULATIONS OF 15TH
SEPTEMBER, 1888, AS AMENDED BY ORDERS IN COUNCIL OF
2ND DECEMBER, 1889, AND 15TH JUNE, 1893.

On the recommendation of the Superintendent General of Indian Affairs, and under the provisions of chapter 43 of the Revised Statutes of Canada, intituled "The Indian Act,"

His Excellency in Council has been pleased to make and does hereby make the following regulations to govern the disposal of Indian lands containing minerals other than coal:—

MINING REGULATIONS TO GOVERN THE DISPOSAL OF MINERAL
LANDS OTHER THAN COAL LANDS.

Sec. 1. These regulations shall be applicable to all Indian lands containing gold, silver, cinnabar, lead, tin, copper, petroleum, iron or other mineral deposit of economic value, with the exception of coal.

Sec. 2. Any person may explore vacant Indian lands that have been surrendered by the Indians and not appropriated or reserved by the Department of Indian Affairs for other purposes, or Indian reserve lands, provided the approval of the Superintendent General of Indian Affairs shall have been previously obtained, and may search therein, either by surface or subterranean prospecting, for mineral deposits, with a view to obtaining under these regulations a mining location for the same, but no mining location or mining claim shall be granted until the discovery of the vein, lode or deposit of mineral or metal within the limits of the location or claim.

I.—QUARTZ MINING.

Sec. 3. A location for mining, except for iron, on veins, lodes, or ledges of quartz or other rock in place, shall not exceed forty acres in area; except in the district of Algoma, where the area of a mining location shall not exceed one hundred and sixty acres. Its surface boundaries shall be straight due north and south and east and west lines not more than four in number. Its length shall not be more than three times its breadth. Its boundaries beneath the surface shall be the vertical planes in which its surface boundaries lie.

Sec. 4. Any person having discovered a mineral deposit may obtain a mining location therefor, under these regulations, in the following manner:—

(a) He shall mark the location on the ground by placing at each of its four corners a wooden post, not less than four inches square, driven not less than 18 inches into the ground, and showing that length above it. If the ground be too rocky to admit of so driving the posts into it, he shall build about each of them, to support it and keep it in place, a cairn or mound of stones, at least three feet in diameter at the base, and 18 inches high. On the most northeasterly post he shall mark, legibly with a cutting instrument, or with colored chalk, or with a pencil, his name in full, the date of such marking, and the letters M. L. 1, to indicate that the post is a mining location post No. 1. Proceeding next to the most southeasterly post, he shall mark it with M. L. 2, and with his initials. Next, the most south-westerly post shall be marked M. L. 3, and with his initials; and, lastly, the most north-westerly post with his initials and the letters M. L. 4. Furthermore, on one of the faces of

each post, which face shall in the planting thereof be turned towards the post which next follows it in the order in which they are here named and numbered, there shall be marked in figures the number of yards' distance to such next following post. If means of measurement are not available, the distance to be so marked on each of the posts may be that estimated. If the corner of a location falls in a ravine, bed of a stream, or any other situation where the character of the locality may render the planting of a post impossible, the corner may be indicated by the erection at the nearest suitable point of a witness post, which in that case shall contain the same marks as those prescribed in this clause in regard to corner posts, as well as the letters W. P., and an indication of the bearing and distance of the site of the true corner from such witness post.

(In this manner any subsequent prospector informed of these regulations, will, on meeting any one of the posts or mounds, be enabled to follow them all round, from one to another, and avoid encroachment, either in search or in marking out another location in the vicinity for himself).

(b) Having so marked out on the ground the location he desires, the claimant shall within ninety days thereafter file with the local agent, in the Indian office for the district in which the location situate, a declaration on oath according to Form A in the Schedule to these regulations (which may be sworn to before the said agent, or may have been previously sworn to before a justice of the peace or commissioner), setting forth the circumstances of his discovery, and describing, as nearly as may be, the locality and dimensions of the claim marked out by him as aforesaid; and shall, along with such declaration, pay to the said agent an entry fee of five dollars.

(c) If the land has been surrendered by the Indians for purposes of sale, the agent shall then give him a receipt, according to Form B in the Schedule to these regulations, for such fee. This receipt shall authorize the claimant, his legal representatives or assigns, to enter into possession of the location applied for, and during the term of one year from its date, to take therefrom and dispose of any mineral deposit contained within its boundaries.

(d) If the land is within a reserve and unsurrendered, the agent shall report the facts of such discovery and application to the Superintendent General of Indian Affairs, and he shall state at the same time whether the interest of the Indians would be prejudicially af-

feeted by the location applied for being sold or otherwise, and should the Superintendent General of Indian Affairs decide that it would be in the interest of the Indians to sell the location, he shall instruct the local agent to submit the question of surrendering the same to be sold for their benefit to the Indians in council for a vote thereon, and should a majority of the Indians entitled to vote decide to surrender the land, a formal surrender in writing shall be taken from them signed by the chief and principal men and duly attested by one of them and the agent in the manner required by law.

(e) The agent shall then forward the surrender to the Superintendent General of Indian Affairs, who shall upon receipt of the same submit it to His Excellency the Governor-General in Council for acceptance.

(f) Should the surrender be accepted by the Governor-General in Council, the location applied for shall be dealt with in the manner prescribed by these regulations for the sale of mineral lands.

Sec. 5. At any time before the expiration of one year from the date of his obtaining the agent's receipt as aforesaid, it shall be open to the claimant to purchase the location on filing with the local agent proof that he has expended not less than five hundred dollars in actual mining operations on the same, such proof to consist of his own sworn statement, accompanied and confirmed by the affidavits of two disinterested persons, setting forth in detail the nature of such operations and the amount expended. This section shall not apply to the district of Algoma; except that the right to purchase a location shall be limited to twelve months from the date of obtaining the agent's receipt as provided in sub-section (c) of section 4 above.

Sec. 6. The price to be paid for a mining location shall be at the rate of [ten] ¹ dollars per acre cash.²

¹ In the original section this was "five," but was altered by Order in Council, dated 2nd December, 1889.

² The words "except in the District of Algoma, where the price shall be at the rate of three dollars per acre," were left out in the clause which was substituted for former section 6 by Order in Council, dated 2nd December, 1889.

By Order in Council, dated the 15th June, 1893, the price of mineral lands controlled by the Department of Indian Affairs, and consisting of surveyed townships, situated in what are known as the Garden River, Batchewana and Goulais Bay tracts, lying north and east of Sault Ste. Marie, in the District of Algoma, has been reduced to \$4.00 per acre.

Sec. 7. On making the application to purchase a mining location, and paying the price therefor as hereinbefore provided, the claimant shall also deposit with the agent the sum of fifty dollars, except in the district of Algoma, where he shall deposit with the agent the sum of one hundred dollars, which shall be deemed payment by him to the Department of Indian Affairs for the survey of his location; and upon receipt of the plans and field notes, and the approval thereof by the said Department, a patent shall issue to the claimant in the form D in the Schedule hereto. If, on account of its remoteness or other cause, a mining location cannot, at the time of the deposit of fifty dollars, or in the district of Algoma one hundred dollars, as aforesaid, by the applicant for the purpose, be surveyed by the said Department for that sum, he shall be subject to the alternative of waiting until the employment of a surveyor by the Department on other work in the vicinity of the claim renders it convenient to have the survey made at a cost not exceeding fifty dollars, or in the district of Algoma one hundred dollars, as aforesaid, or of sooner procuring at his own cost its survey by a duly commissioned surveyor of the province, district or territory in which the lands are situated, under instructions from the said Department; in the latter case, on receipt of the plans and field notes of the survey and approval thereof by the said Department, as hereinbefore provided, the claimant shall be entitled to receive his patent, and to have returned to him the fifty dollars, or in the district of Algoma one hundred dollars, as aforesaid, deposited by him to defray cost of survey.

Sec. 8. Should the claimant, or his legal representatives as aforesaid, fail to prove within one year the expenditure prescribed; or, having proved such expenditure, fail within that time to pay in full, and in cash, to the local agent, the price hereinbefore fixed for such mining location, and also to pay the sum of fifty dollars hereinbefore prescribed for the survey of his location, then any right on the part of the claimant, or of his legal representatives, in the location, or claim on his or their part to acquire it, shall lapse, and the location shall thereupon revert to the Crown and shall be held, along with any immovable improvements thereon, for disposal, under these regulations, to any other person, or as the Superintendent General of Indian Affairs may direct; provided that the Superintendent General of Indian Affairs may, upon sufficient cause being shown, extend the time within which the claimant may purchase his mining

location for the additional term of one year, upon payment by the claimant of a new entry fee and the relinquishment of his original receipt, in exchange for which the agent shall, when so directed by the said Minister, give him a new receipt in the Form C in the Schedule hereto.

Sec. 9. Where two or more persons lay claim to the same mining location, the right to acquire it shall be in him who can prove he was the first to discover the mineral deposit involved, and to take possession by demarcation, in the manner prescribed in these regulations, of the location covering it.

Sec. 10. Priority of discovery alone shall not give the right to acquire; but a person subsequently and independently discovering, who has complied with the other conditions prescribed in these regulations, shall take precedence of the first discoverer if the latter has failed to comply with the said other conditions: Provided, however, that in any case where it is proved that a claimant has in bad faith used the prior discovery of another, and fraudulently affirms that he made independent discovery and demarcation, he shall, apart from any other legal consequences, have no claim, and shall forfeit the deposit made with his application, and shall be absolutely debarred from obtaining another mining location.

Sec. 11. Not more than one mining location shall be granted to any individual claimant upon the same lode or vein.

Sec. 12. Where land is used or occupied for milling purposes, reduction works or other purposes incidental to mining operations, either by the proprietor of a mining location or other person, such land may be applied for and patented, either in connection with, or separate from, a mining location, in the manner hereinbefore provided for the application for, and the patenting of, mining locations, and may be held in addition to any such mining location; but such additional land shall in no case exceed five acres in extent and shall be paid for at the same rate as a mining location.

Sec. 13. The Superintendent General of Indian Affairs may grant a location for the mining of iron not exceeding 160 acres in area: Provided, that should any person making an application purporting to be for the purpose of mining iron thus obtain, whether in good faith or fraudulently, possession of a valuable mineral de-

posit other than iron, his right in such deposit shall be restricted to the area hereinbefore prescribed for other minerals, and the rest of the location shall thereupon revert to the Crown for such disposition as the Minister may direct.

Sec. 14. When there are two or more applicants for any mining location, no one of whom is the original discoverer, or his assignee, the Superintendent General of Indian Affairs, if he sees fit to dispose of the location, shall invite their competitive tenders, or shall put it up to public tender, or auction, as he may deem expedient.

Sec. 15. An assignment of the right to purchase a mining location shall be endorsed on the back of the receipt or certificate of assignment (Forms B and E, in the Schedule hereto), and the execution thereof shall be attested by two disinterested witnesses; upon the deposit of the receipt or certificate with such assignment executed and attested as herein provided, in the office of the local agent, accompanied by a registration fee of two dollars, the local agent shall give to the assignee a receipt in the Form E in the Schedule hereto, which certificate shall entitle the assignee to all the rights and privileges of the original discoverer in respect of the claim assigned; and the said assignment shall be forwarded to the Superintendent General of Indian Affairs by the local agent at the same time and in like manner as his other returns respecting Indian lands, and shall be registered in the Department of Indian Affairs; and no assignment of the right to purchase a mining location which is not unconditional and in all respects in accordance with the provisions of this clause, and accompanied by the registration fee herein provided for, shall be recognized by the local agent or registered in the Department of Indian Affairs.

Sec. 16. If application be made under the next preceding section by the assignee of the right to purchase a mining location, and such claim is duly recognized and registered, as hereinbefore provided, such assignee shall, by complying with all the provisions of sections 5 and 7, become entitled to purchase the location for the price and on the terms prescribed in these regulations, whether or not his assignor may have previously acquired a mining location under them.

II.—PLACER MINING.

Sec. 17. The regulations hereinbefore laid down in respect of quartz mining shall be applicable to placer mining so far as they relate to entries, entry fees, assignments, marking of location, agents' receipts, and generally where they can be applied, save that the boundaries of placer mining claims need not be due north and south and east and west lines, and except as otherwise herein provided.

Nature and Size of Claims.

Sec. 18. The size of claims shall be as follows:—

(a) For "bar diggings," a strip of land 100 feet wide at high water mark, and thence extending into the river to its lowest water level.

(b) For "dry diggings," 100 feet square.

(c) "Creek and river claims," shall be 100 feet long, measured in the direction of the general course of the stream and shall extend in width from base to base of the hill or bench on each side, but when the hills or benches are less than 100 feet apart the claim shall be 100 feet square.

(d) "Bench claims," shall be 100 feet square.

(e) Every claim on the face of any hill, and fronting on any natural stream or ravine, shall have a frontage of 100 feet, drawn parallel to the main direction thereof, and shall be laid out, as nearly as possible, in the manner prescribed by section 4 of these regulations.

(f) If any miner or association of miners shall discover a new mine, and such discovery shall be established to the satisfaction of the agent, claims of the following size, in dry, bar, bench, creek, or hill diggings, shall be allowed:—

To one discoverer	300 feet in length.	
To a party of two	600	"
" three	800	"
" four	1,000	"

and to each member of a party beyond four in number a claim of the ordinary size only.

A new stratum of auriferous earth or gravel, situated in a locality where the claims are abandoned, shall for this purpose be deemed a new mine, although the same locality shall have been previously worked at a different level; and dry diggings discovered in the vicinity of bar diggings shall be deemed a new mine, and *vice versa*.

Rights and Duties of Miners.

Sec. 19. The forms of application for a grant for placer mining, and the grant of the same, shall be those contained in Forms F and G in the Schedule hereto.

Sec. 20. The entry of every holder of a grant for placer mining must be renewed, and his receipt relinquished and replaced, every year, the entry fee being paid each time.

Sec. 21. No miner shall receive a grant of more than one mining claim in the same locality, but the same miner may hold any number of claims by purchase, and any number of miners may unite to work their claims in common upon such terms as they may arrange, provided such agreement be registered with the local agent.

Sec. 22. Any miner or association of miners may sell, mortgage, or dispose of his or their claims, provided such disposal be registered with, and a fee of two dollars paid to the local agent, who shall thereupon give the assignee a certificate in Form H in the Schedule hereto.

Sec. 23. Every miner shall, during the continuance of his grant, have the exclusive right of entry upon his own claim, for the miner-like working thereof, and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom; but he shall have no surface rights therein; and the local agent may grant to the holders of adjacent claims such right of entry thereon as may be absolutely necessary for the working of their claims, upon such terms as may to him seem reasonable.

Sec. 24. Every miner shall be entitled to the use of so much of the water naturally flowing through or past his claim, and not already lawfully appropriated, as shall, in the opinion of the local

agent, be necessary for the due working thereof; and shall be entitled to drain his own claim free of charge.

Sec. 25. A claim shall be deemed to be abandoned and open to occupation and entry by any person when the same shall have remained unworked on working days by the grantee thereof for the space of seventy-two hours, unless sickness or other reasonable cause be shown, or unless the grantee is absent on leave.

Sec. 26. A claim granted under these regulations shall be continuously and in good faith worked, except as otherwise provided, by the grantee thereof or by some person on his behalf.

Sec. 27. In tunnelling under hills, on the frontage of which angles occur, or which may be of an oblong or elliptical form, no party shall be allowed to tunnel from any of the said angles, or from either end of such hills, so as to interfere with parties tunnelling from the main frontage.

Sec. 28. Tunnels and shafts shall be considered as belonging to the claim for the use of which they are constructed, and as abandoned or forfeited by the abandonment or forfeiture of the claim itself.

Sec. 29. For the more convenient working of back claims on benches or slopes, the local agent may permit the owners thereof to drive a tunnel through the claims fronting on any creek, ravine or water-course upon such terms as he may deem expedient.

Leave of Absence.

Sec. 30. In cases where water is necessary to the continuance of mining operations and the supply of water is insufficient, the agent shall have power to grant leave of absence to the holder of the grant during such insufficiency but no longer, except by permission of the Superintendent General of Indian Affairs.

Sec. 31. Any miner or association of miners shall be entitled to leave of absence for one year from his or their diggings upon proving to the satisfaction of the agent that he or they have expended on such diggings in cash, labor or machinery an amount not less than five hundred dollars on each of such diggings without any return of gold or other minerals in reasonable quantities from such expenditure.

Sec. 32. The time occupied by the locator of a claim in going to and returning from the office of the local agent to enter his claim, or for other purposes prescribed by these regulations, shall not be counted against him, but he shall, in such cases, be deemed to be absent on leave.

Administration.

Sec. 33. In case of the death of any miner while entered as the holder of any mining claim, the provisions as to abandonment shall not apply either during his last illness or after his decease.

Sec. 34. The local agent shall take possession of the mining property of the deceased, and may cause such mining property to be duly worked, or dispense therewith, at his option, and he shall sell the property by private sale, or after ten days' notice thereof, by public auction, upon such terms as he shall deem just, and out of the proceeds pay all costs and charges incurred thereby, and pay the balance, if any, to the legal representatives of the said deceased miner.

Sec. 35. The local agent, or any person authorized by him, shall in every case take charge of all the property of a deceased miner until the issue of letters of administration or the probate of his will.

III.—BED-ROCK FLUMES.

Sec. 36. It shall be lawful for any local agent, upon the application hereinafter mentioned, to grant to any bed-rock flume company, for any term not exceeding five years, exclusive rights of way through and entry upon any mining ground in his district, for the purpose of constructing, laying and maintaining bed-rock flumes.

Sec. 37. Three or more persons may constitute themselves into a bed-rock flume company, and every application by them for such grant shall state the names of the applicants and the nature and extent of the privileges sought to be acquired. Between the months of June and November, ten clear days' notice thereof shall be given, and between the months of November and June one month's notice shall be given, by affixing the same to a post planted in some conspicuous part of the ground or to the face of the rock.

and a copy thereof conspicuously upon the inner walls of the Indian office of the district. Prior to such application, the ground included therein shall be marked out in the manner prescribed in sub-section (a) of section 4 of these regulations. It shall be competent for any person to protest before the local agent within the times hereinbefore prescribed for the notice of such application, but not afterwards, against such application being granted. Every application for a grant shall be accompanied by a deposit of \$100, which shall be returned if the application be refused, but not otherwise.

Sec. 38. Every such grant shall be in writing, in the Form I given in the Schedule hereto.

Sec. 39. The holders of claims through which the line of the company's flume is to run may put in a bed-rock flume in their claims to connect with the company's flume, upon giving the company ten days' notice in writing to that effect; but they shall maintain the like grade, and build their flumes as thoroughly, and of as strong materials, as that built by such company.

Sec. 40. Every bed-rock flume company shall lay at least 50 feet of flume during the first year and 100 feet annually thereafter, until completion of the flume.

Sec. 41. Any miners lawfully working any claims where a bed-rock flume exists, shall be entitled to tail their sluices, hydraulics and ground sluices into such flume, but so as not to obstruct the free working of such flume by rocks, stones, boulders or otherwise.

Sec. 42. Upon a grant being made to any bed-rock flume company, the local agent shall register the same, and the company shall pay for such registration a fee of \$10. They shall also pay, in advance, an annual rent of \$10 for each quarter of a mile of right of way legally held by them.

IV.—DRAINAGE OF MINES.

Sec. 43. The Superintendent General of Indian Affairs may grant to any person, or association of persons, permission to run a drain or tunnel for drainage purposes through any occupied mining land, and may give such persons exclusive rights of way through and entry upon any mining ground for any term not exceeding five

years, for the purpose of constructing a drain or drains for the drainage thereof.

Sec. 44. The grantee shall compensate the owners of lands or holders of claims entered upon by him for any damage they may sustain by the construction of such tunnel or drain, and such compensation, if not agreed upon, shall be settled by the local agent and be paid before such drain or tunnel is constructed.

Sec. 45. Such tunnel or drain, when constructed, shall be deemed to be the property of the person or persons by whom it shall have been so constructed.

Sec. 46. Every application for a grant shall state the names of the applicants, the nature and extent of the proposed drain or drains, the amount of toll (if any) to be charged, and the privileges sought to be acquired, and shall, save where the drain is intended only for the drainage of the claim of the person constructing the same, be accompanied by a deposit of \$25, which shall be refunded in case the application is refused, but not otherwise. Notice of the application shall be given, and protest may be made, in the same manner as provided in regard to bed-rock flumes.

Sec. 47. The grant of the right of way to construct drains or tunnels, shall be made in the Form J in the Schedule hereto. The grant shall be registered by the grantee in the office of the local agent, to whom he shall at the time pay a registration fee of \$5, or, if the grant gives power to collect tolls, a fee of \$10. An annual rent of \$10 shall be paid, in advance by the said grantee for each quarter of a mile of right of way legally held by him, save where the drain shall be for the purpose of draining only the claim of the person constructing the same.

V.—DITCHES.

Sec. 48. The Superintendent General of Indian Affairs may, upon the application hereinafter mentioned, grant to any person, or association of persons, for any term not exceeding five years, the right to divert and use the water from any stream or lake, at any particular part thereof, and the rights of way through and entry upon any mining ground, for the purpose of constructing ditches and flumes to convey such water; provided always, that every such grant

shall be deemed as appurtenant to the mining claim in respect of which it has been obtained, and, whenever the claim shall have been worked out or abandoned, or whenever the occasion for the use of such water upon the claim shall have permanently ceased, the grant shall be at an end and determined. The grantee shall record the said grant with the local agent during each year of the continuance of the same, and whilst it shall be in operation.

Sec. 49. Twenty days' notice of the application shall be given, by affixing the same to a post planted in some conspicuous part of the ground, and a copy thereof conspicuously upon the inner walls of the Indian Office for the district, and any person may protest within such twenty days, and not afterwards, against such application being wholly or partially granted.

Sec. 50. Every application for a grant of water exceeding 200 inches, shall be accompanied by a deposit of \$25, which shall be refunded in case the application is refused, but not otherwise.

Sec. 51. Every such application shall state the names of the applicants, the name or description of the stream or lake to be diverted, the quantity of water to be taken, the locality for its distribution, and the price (if any) to be charged for the use of such water, and the time necessary for the completion of the ditch. The grant shall be in Form K in the Schedule hereto.

Sec. 52. Every grant of a water privilege on unoccupied creeks, shall be subject to the right of such miners as shall, at the time of such grant, be working on the stream above or below the ditch head, and of any other persons lawfully using such water for any purpose whatsoever.

Sec. 53. If, after the grant has been made, any miner or miners locate and *bona fide* work any mining claim below the ditch head, on any stream so diverted, he or they collectively shall be entitled to 40 inches of water if 200 inches be diverted, and 60 inches if 300 inches be diverted, and no more, except upon paying to the owner of the ditch, and all other persons interested therein, compensation equal to the amount of damage sustained by the diversion of such extra quantity of water as may be required; and, in computing such damage, the loss sustained by any claims using water therefrom, and all other reasonable losses, shall be considered.

Sec. 54. No person shall be entitled to a grant of the water of any stream, for the purpose of selling the water to present or future claim holders, on any part of such stream. The Superintendent General of Indian Affairs may, however, grant such privileges as he may deem just, when such ditch is intended to work bench or hill claims fronting on any such stream, provided that the rights of miners then using the water so applied for be protected.

Sec. 55. The Superintendent General of Indian Affairs may, on the report of the local agent that such action is desirable, order the enlargement or alteration of any ditch, and fix the compensation (if any) to be paid by parties to be benefited thereby.

Sec. 56. Every owner of a ditch or water privilege shall take all reasonable means for utilizing the water granted to him; and if he wilfully takes and wastes any unreasonable quantity of water, the Minister may, upon the report of the local agent, if such offence be persisted in, declare all rights to the water forfeited.

Sec. 57. The owner of any ditch or water privilege may distribute the water to such persons, and on such terms, as he may deem advisable, within the limits mentioned in his grant; provided always that such owner shall be bound to supply water to all miners who make application therefor, in a fair proportion, and shall not demand more from one person than from another, except where the difficulty of supply is enhanced.

Sec. 58. Any person desiring to bridge any stream claim, or other place, for any purpose, or to mine under or through any ditch or flume, or to carry water through or over any land already occupied, may, in proper cases, do so with the written sanction of the local agent. In all such cases, the right of the party first in possession is to prevail, so as to enable him to compensation if the same be just.

Sec. 59. In measuring water in any ditch or sluice, the following rules shall be observed: The water taken into a ditch or sluice shall be measured at the ditch or sluice head. No water shall be taken into a ditch or sluice except in a trough placed horizontally at the place at which the water enters it. One inch of water shall mean half the quantity that will pass through an orifice 2 inches high by 1 inch wide, with a constant head of 7 inches above the upper side of the orifice,

Sec. 60. Whenever it shall be intended, in forming or upholding any ditch, to enter upon and occupy any part of a registered claim, or to dig or loosen any earth or rock, within 4 feet of any ditch not belonging solely to the registered owner of such claim, three days' notice in writing of such intention shall be given before entering or approaching within 4 feet of such other property.

Sec. 61. Any person engaged in the construction of any road or work may, with the sanction of the Superintendent General of Indian Affairs, cross, divert, or otherwise interfere with any ditch, water privilege, or other mining rights whatsoever, for such period as the Minister shall approve.

Sec. 62. The Minister shall order what compensation for every such damage or interference shall be paid, and when and to whom, and whether any and what works damaged or affected by such interference as aforesaid shall be replaced by flumes or otherwise repaired by the person or persons inflicting any such damage.

Sec. 63. The owners of any ditch, water privilege, or mining right shall, at their own expense, construct, secure and maintain all culverts necessary for the passage of waste and superfluous water flowing through or over any such ditch, water privilege or right.

Sec. 64. The owners of any ditch or water privilege shall construct and secure the same in a proper and substantial manner, and maintain the same in good repair to the satisfaction of the local agent, and so that no damage shall occur to any road or work in its vicinity from any part of the works of such ditch, water privilege or right.

Sec. 65. The owners of any ditch, water privilege or right, shall be liable, and shall make good, in such manner as the local agent shall determine, all damages which may be occasioned by or through any parts of the works of such ditch, water privilege or right breaking or being imperfect.

Sec. 66. Nothing herein contained shall be construed to limit the right of the Lieutenant-Governor of the North-West Territories in Council, or of the proper authority in any Province containing Indian lands, to lay out, from time to time, public roads across, through, along or under any ditch, water privilege or mining right, without compensation.

VI.—GENERAL PROVISIONS.

Interpretation.

Sec. 67. In these regulations the following expressions shall have the following meanings respectively, unless inconsistent with the context:—

“Minister” shall mean the Superintendent General of Indian Affairs.

“Agent” or “local agent” shall mean the Indian agent, Indian superintendent or Indian lands agent, as the case may be, for the district, or other officer appointed by the Government for the particular purpose referred to.

“Mineral” shall include all minerals whatsoever other than coal.

“Close season” shall mean the period of the year during which placer mining is generally suspended.

“Miner” shall mean a person holding a mining location or a grant for placer mining.

“Claim” shall mean the personal right of property in a placer mine or diggings during the time for which the grant of such mine or diggings is made.

“Bar diggings” shall mean any mine over which a river extends when in its flooded state.

“Dry diggings” shall mean any mine over which a river never extends.

The mines or benches shall be known as “bench diggings,” and shall, for the purposes of defining the size of such claims, be excepted from “dry diggings.”

“Streams and ravines” shall include water-courses whether usually containing water or not, and all rivers, creeks and gulches.

“Ditch” shall include a flume or race, or other artificial means for conducting water by its own weight, to be used for mining purposes.

“Ditch head” shall mean the point in a natural water-course or lake where water is first taken into a ditch.

"Claimant" shall mean a person who has obtained an entry for a mining location with a view to patent.

"Placer mining" shall mean the working of all forms of deposits excepting veins of quartz or other rock in place.

"Quartz mining" shall mean the working of veins of quartz or other rock in place.

"Location" shall mean the land entered by or patented to any person for the purpose of quartz mining.

Hearing and Decision of Disputes.

Sec. 68. The local agent shall have power to hear and determine all disputes in regard to mining property arising within his district, subject to appeal by either of the parties to the Deputy Superintendent General of Indian Affairs.

Sec. 69. No particular forms of procedure shall be necessary, but the matter complained of must be properly expressed in writing, and a copy of the complaint shall be served on the opposite party not less than days before the hearing of the said complaint.

Sec. 70. The complaint may, by leave of the local agent, be amended at any time before or during the proceedings.

Sec. 71. The complainant shall, at the time of filing his complaint, deposit therewith a bond-fee of \$10, which shall be returned to him if the complaint proves to have been well founded, and not otherwise, except for special cause by direction of the Superintendent General of Indian Affairs.

Sec. 72. In the event of the decision of the local agent being made the subject of an appeal to the Deputy Superintendent General of Indian Affairs, the appellant shall, at the time of lodging the appeal, deposit with the local agent a bond-fee of \$10, which shall be returned to the said appellant if his appeal proves to have been well founded, and not otherwise, except for special cause by direction of the Superintendent General of Indian Affairs.

Sec. 73. The appeal must be in writing and must be lodged with the local agent not more than three days after he has given his

decision, and must state the grounds upon which the said decision is appealed from.

Sec. 74. If the Deputy Superintendent General of Indian Affairs decides that it is necessary to a proper decision of the matter in issue to have an investigation on the ground; or in cases of disputed boundaries or measurements, to employ a surveyor to measure or survey the land in question, the expense of the inspection or re-measurement or re-survey, as the case may be, shall be borne by the litigants, who shall pay into the hands of the said Deputy Superintendent General of Indian Affairs, in equal parts, such sum as he may think sufficient for the same before it takes place; otherwise it shall not proceed, and the party who refuses to pay such sum shall be adjudged in default. The said Deputy Superintendent General of Indian Affairs shall subsequently decide in what proportion the said expense should be borne by the parties respectively, and the surplusage, if any, shall be returned to the parties as he may order.

Sec. 75. All bond-fees adjudged as forfeited by the local agent or Deputy Superintendent General of Indian Affairs, and all payments retained under the last preceding section shall, as soon as decision has been rendered, and all entry and other fees or moneys shall, as soon as they have been received by him, be paid by the said agent or Deputy Superintendent General of Indian Affairs to the credit of the Receiver General in the same manner as other moneys received by him on account of Indian lands.

Leave of Absence.

Sec. 76. The agent in each district shall, under instructions from the Superintendent General of Indian Affairs, declare the close season in his district.

Sec. 77. Each holder of a mining location or of a grant for placer mining shall be entitled to be absent from his mining location or diggings and to suspend work thereon during the close season.

Sec. 78. The local agent shall have power to grant leave of absence to the holder of a mining location or grant for placer mining pending the decision of any dispute in which he is concerned under these regulations.

Sec. 79. The Superintendent General of Indian Affairs shall, from time to time, as he may think fit, declare the boundaries of

mineral and mining districts, and shall cause a description of the same to be published in the *Canada Gazette*.

Sec. 80. The Superintendent General of Indian Affairs may direct mineral and mining locations to be laid out within such districts wherever, from the report of the director of the Geological Survey, or from other information, he has reason to believe there are mineral deposits of economic value, and may sell the same to applicants therefor, who, in his opinion, are able and intend in good faith to work the same, or he may from time to time cause the said locations to be sold by public auction or tender. Such sales shall be for cash, and at prices in no case lower than those prescribed for locations sold to original discoverers, and shall otherwise be subject to all the provisions of these regulations.

Royalty.

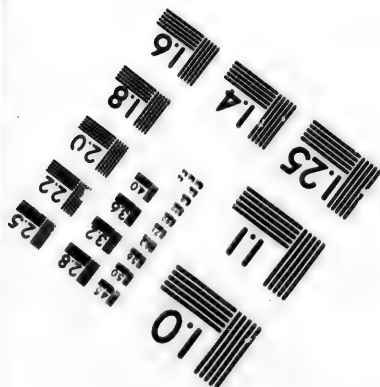
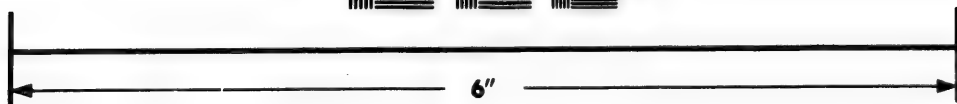
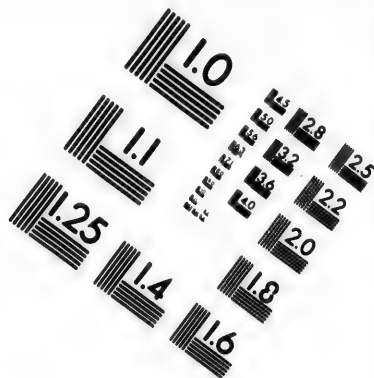
Sec. 81. Read as follows: "The patent for a mining or mineral location shall reserve to the Crown, forever, a royalty of 4 per cent. on the sales of the products of all mines therein in trust for the Indians interested in the land patented," but was repealed by Order in Council dated 2nd December, 1889.

Sec. 82. Read as follows: "Returns shall be made by the grantee, sworn to by him, or by his agent or other employee in charge of the mine, at monthly or other such intervals as may be required by the Superintendent General of Indian Affairs, of all products of his mining location, and of the price or amount he received for the same.

The foregoing sections numbered 81 and 82 shall not apply to the district of Algoma," but was repealed by Order in Council dated 2nd December, 1889, by which it was also provided "That the foregoing amendments so far as royalty is concerned, also apply to any mineral lands which may have been patented or applied for since the 1st of October, 1887, being the date of the Order in Council establishing the first Indian Lands Mining Regulations, provided an amount be paid in cash to make up the difference between the price already paid and the price hereby fixed for mining lands."

Miscellaneous.

Sec. 83. The local agent shall have the power to summarily order any mining works to be so carried on as not to interfere with



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or endanger the safety of the public, any public work or highway, or any mining property, mineral lands, mining claims, bed-rock claims or flumes; and any abandoned works may by his order be either filled up or guarded to his satisfaction, at the cost of the parties who may have constructed the same, or in their absence upon such terms as he shall think fit.

Sec. 84. The agent in each district, acting under instructions to be from time to time issued by the Superintendent General of Indian Affairs, shall cause to be laid out, at the expense of the person or persons applying for the same, a space of ground for deposits of leavings and deads from any tunnel, claim or mining ground.

Forfeiture.

Sec. 85. In the event of the breach of these regulations or any of them, by any person holding a grant or right of any description from the Crown, or from the Superintendent General of Indian Affairs, or from any duly authorized officer of Indian lands, such right or grant shall be absolutely forfeited *ipso facto*, and the person so offending shall be incapable thereafter of acquiring any such right or grant, unless for special cause otherwise decided by the Superintendent General of Indian Affairs.

(For Schedule of Forms to these regulations, see Appendix II.)

REGULATIONS FOR THE DISPOSAL OF COAL LANDS, THE PROPERTY OF THE DOMINION GOVERNMENT, IN MANITOBA, THE NORTH-WEST TERRITORIES AND BRITISH COLUMBIA, AS EMBODIED IN THE REGULATIONS APPROVED BY ORDERS IN COUNCIL (No. 2167) OF THE 17TH SEPTEMBER, 1889, AND 9TH JULY, 1892.

Sec. 34. (a) Lands containing anthracite coal may be sold at an upset price of \$20 per acre, cash, and coal other than anthracite an upset price of \$10 per acre, cash, or may be sold by public competition if the Minister of the Interior shall so decide.

(b) Not more than three hundred and twenty acres shall be sold to one applicant.

Sec. 35. When there is more than one applicant for the same coal location, the Minister of the Interior may invite competi-

tion between the several applicants, or offer the land for sale at public competition by tender or by auction, as he may think expedient, at the upset price of coal lands.

Sec. 36. In cases where the Minister of the Interior satisfies himself that companies, or persons, having expended considerable sums of money in exploring for coal on lands for which they may have applied under the regulations of the 17th of December, 1881, the said lands may be sold to such companies or persons at the upset price fixed for such lands.

Sec. 37. The boundaries beneath the surface of coal mining locations shall be the vertical planes or lines in which their surface boundaries lie.

Sec. 38. The rights of lessees, and of persons in favour of whom Orders in Council authorizing leases have been passed, shall not be affected by these regulations.

Sec. 39. The Minister of the Interior may upon application grant permission to prospect¹ for coal for a period of sixty days, and such permission may cover any single tract of land not exceeding three hundred and twenty acres in extent.

¹ The license fee is \$10.

Sec. 40. If the land sought for be not included in any surveyed township, the applicant shall stake out the same, by placing at each angle or corner thereof a stake or post at least four inches square, and standing not less than four feet above the surface of the ground; and upon each post he shall inscribe his name and the angle represented thereby thus: "A. B.'s N. E. Corner" (meaning north-east corner) or as the case may be; except such posts are so planted before an application for permission to prospect is made, all the proceedings taken by the applicant shall be void; also with his application he shall forward to the Minister of the Interior a map or sketch of the land as staked out, specifying metes and bounds, and showing thereon the best information in his power respecting the same, and all boundaries so staked out shall be due north and south, and east and west lines, and the length thereof shall not exceed twice the breadth; if, however, the land has already been included in any general survey, then the official number of the section or sections, parts or legal subdivisions of a section, shall be given.

Sec. 41. The party or parties to whom permission to prospect may be given, shall within one month from the date of such permis-

sion commence operations and carry on the same continuously throughout the remainder of the period covered thereby; and shall expend in such prospecting a sum at the rate of not less than \$2 per day from the time of commencement of the same; and the permission so given shall become void if the said operations cease for one week during the remainder of the period for which such permission is given.

Sec. 42. On application to the Minister of the Interior, the time covered by permission to prospect may be extended, if the applicant has complied with the above requirements, and provided there are no other applicants for the lands comprised therein; should there be others, however, it will be necessary that the right to prospect be acquired by competition amongst the applicants.

Sec. 43. If the time covered by permission to prospect be extended it will be necessary that prospecting operations be carried on continuously from the date of such extension.

LANDS PATENTED OR ENTERED, ON WHICH THE MINING RIGHTS HAVE
BEEN RESERVED.

Sec. 44. (a) Any person or persons desirous of obtaining permission to prospect for minerals on lands that have been patented or entered and on which the mining rights have been reserved, shall make application therefor to the Minister of the Interior.

(b) Such application shall be in writing, defining clearly the area applied for, which area must not exceed 320 acres.

(c) If the Minister of the Interior sees no objection to the application being granted, the applicant will be given permission to prospect for a period of sixty days, upon furnishing the Minister with proof that he has complied with the provisions of the following subsection.

(d) The applicant shall enter into a bond, with two sureties to the satisfaction of the Superintendent of Mines, to recompense the owner or occupant of the soil for damages that may be done to his lands.

(e) If the proprietor of lands so entered upon shall seek damages, he shall, before the end of two months after the expiration of the permission given, make his claims in writing against the prospector, detailing the particulars and amount of claim; and if the claim is not

adjusted by agreement between the parties within one month after notice thereof as aforesaid, it shall be settled by arbitration in the manner prescribed in sections 50 and 51 of these regulations.

Sec. 45. (a) The permission given to prospect shall be subject to the conditions of section 41 of these regulations.

(b) A renewal for a further period of sixty days may be granted provided that the conditions of these regulations have been complied with; but should there be other applicants for the lands over which permission to prospect has been given, competition amongst the same will be invited.

Sec. 46. No permission to prospect shall authorize entry upon any buildings or the curtilage appertaining to any house, store, barn or buildings, or upon any garden, orchard, or ground reserved for ornament, or under cultivation by growing crops, and inclosed, except with the consent of the occupier or permission from the Minister of the Interior upon special application setting forth the circumstances under which the same is applied for, and on such terms as the case may require.

Sec. 47. If, at the expiration of the period for which permission has been given to prospect on lands, it be desired to acquire the mining rights thereunder, they will be sold at the rate and on the terms prescribed by the mining regulations, less the price ruling for surface rights in the class in which the lands may be situated.

Sec. 48. Before a patent of the mining rights of any lands can be issued, it will be necessary for the party obtaining the same to furnish proof to the Minister of the Interior that he has acquired the surface rights of land from the owner or agent or occupier of such lands.

Sec. 49. If the occupier of the lands has not received a patent therefor, the purchase money of the surface rights must be paid to the Crown, and a patent of the surface rights will issue to the party who acquired the mining rights. The money so collected will either be refunded to the occupier of the land, when he is entitled to a patent therefor, or will be credited to him on account of payment for land.

Sec. 50. When the party obtaining the mining rights to lands cannot make an arrangement with the owner or his agent or the

occupant thereof for the acquisition of the surface rights, it shall be lawful for him to give notice to the owner or his agent or the occupier to appoint an arbitrator to act with another arbitrator named by him, in order to award the amount of compensation to which the owner or occupant shall be entitled. The notice mentioned in this section shall be according to a form to be obtained upon application from the agent of Dominion lands for the district in which the lands in question lie, and shall, when practicable, be personally served on such owner, or his agent if known, or occupant; and after reasonable efforts have been made to effect personal service, without success, then such notice shall be served by leaving it at, or sending by registered letter to, the last place of abode of the owner, agent or occupant. Such notice shall be served, if the owner or agent resides in the district in which the land is situated, ten days, if out of the district and within the province, twenty days, and if out of the province, thirty days, before the expiration of the time limited in such notice. If the proprietor refuses or declines to appoint an arbitrator, or when, for any other reason, no arbitrator is appointed by the proprietor in the time limited therefor in the notice provided for by this section, the agent of Dominion lands for the district in which the lands in question lie, shall, on being satisfied by affidavit that such notice has come to the knowledge of such owner, agent or occupant, or that such owner, agent or occupant wilfully evades the service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, and that the notice was left at the last place of abode of such owner, agent or occupant, appoint an arbitrator on his behalf.

Sec. 51. (a) All the arbitrators appointed under the authority of these regulations shall be sworn before a Justice of the Peace to the impartial discharge of the duties assigned to them, and they shall forthwith proceed to estimate the reasonable damages which the owner or occupants of such lands, according to their several interests therein, shall sustain by reason of such prospecting and mining operations. (O. in C. 9th July, 1892.)

(b) In estimating such damages, the arbitrators shall determine the value of the land irrespectively of any enhancement thereof from the existence of minerals therein.

(c) In case such arbitrators cannot agree, they may select a third arbitrator, and when the two arbitrators cannot agree upon a third arbitrator, the agent of Dominion lands for the district in which the lands in question lie shall select such third arbitrator.

(d) The award of any two such arbitrators made in writing shall be final, and shall be filed with the agent of Dominion lands for the district in which the lands lie.

REGULATIONS FOR THE ISSUE OF PERMITS TO MINE COAL ON DOMINION LANDS, FOR DOMESTIC PURPOSES ONLY, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL ON THE 9TH DAY OF FEBRUARY, 1897.

1. The following regulations apply to coal mined on Dominion lands for domestic purposes only:

2. The frontage of a coal mining location shall not exceed three chains in width measured in direct distance, and the length thereof shall not exceed ten chains, nor shall it be less than five chains, except where the ground is covered by a prior location. Its boundaries beneath the surface shall be the vertical planes in which its surface boundaries lie.

3. The location shall be marked on the ground by placing at each of its four corners a wooden post not less than four inches square, driven not less than eighteen inches into the ground and showing that length above it. If the ground is too rocky to admit of so driving such posts, the claimant shall build about each of them, to support it and keep it in place, a cairn or mound of stones, at least three feet in diameter at the base, and eighteen inches high. If the location be timbered, a line shall be run and well blazed joining the said posts. If it be not timbered, and the ground is of such a nature that any one post cannot be seen from the ends of either of the lines which form the angle at which the said post is placed, posts flattened on two sides (such flattened portions facing the directions of the line) shall be planted or mounted along the side lines wherever necessary so that no difficulty may be experienced by a subsequent prospector or explorer discovering or following the boundaries of any location. If the location be laid out with its boundaries due north and south and east and west, then the claimant shall mark on the post at the north-east angle of the location, legibly with a cutting instrument or with coloured chalk, his name in full, the date of such marking, and the letters M. L. No. 1, to indicate that the post is Mining Location Post No. 1. Proceeding next to the south-easterly angle of the location, he shall mark the post planted there with the letters M. L. No. 2, and his initials; next to the south-westerly angle of the location the post

planted at which he shall mark with the letters M. L. No. 3, and his initials, and lastly to the north-westerly angle of the location, the post planted at which he shall mark with the letters M. L. No. 4, and his initials. If the location be laid out by other than due north and south and east and west lines, the first mentioned post shall be the one at the northerly angle; the second the one at the easterly angle; the third the one at the southerly angle, and the fourth the one at the westerly angle; furthermore on the face of each post, which face shall in the planting thereof be turned towards the post which next follows it in the order in which they are named and numbered, there shall be marked in figures the number of yards distant to the next following post. If means of measurement are not available, the distance to be so marked on each of the posts may be that estimated. If the corner of a location falls in a ravine, bed of a stream, or any other situation where the character of the locality may render the planting of a post impossible, the said corner may be indicated by the erection at the nearest suitable point of a witness post, which in that case shall contain the same marks as those prescribed in this clause with regard to corner posts, together with the letters W. P., and an indication of the bearing and distance of the site of the true corner from such witness post.

4. If the location is situated within territory where no surveys have been made, it shall be connected with some prominent feature in the locality, the connection to be shown on a sketch to be furnished by the claimant. If it is situated on the bank of a stream, the claimant shall show on the sketch the general course of the stream, any ravine running back from the same, and such other topographical features as are noticeable.

5. If the location is situated within territory which has not been subdivided, but where one or more township lines have been established, it shall be connected with some point on such established boundary.

6. Having so marked the location on the ground, the claimant shall within thirty days thereafter file with the agent for the land district within which the location is situated, an application for the same with a sketch showing its position, and if within a surveyed tract the quarter-section within which it is situated.

7. If within thirty days after staking a location the claimant has not made application to the agent therefor, it shall be open to any

other applicant who complies with the requirements of these regulations.

8. Where two or more persons lay claim to the same location, the right to acquire it shall be in him who can prove that he was the first to discover the mineral deposit involved, and to take possession by demarcation in the manner prescribed in these regulations of the location covering it.

9. When there are two or more applicants for a location, no one of whom is the original discoverer, the Minister of the Interior, if he sees fit to dispose of the location, shall invite their competitive tenders.

10. A permit to mine coal on the location staked out will be issued upon payment of the annual rental of five dollars for any area less than one acre, and for an area of one acre or over, at the rate of five dollars an acre. Returns on a form to be furnished by the Department of the Interior shall be made by the permittee every month to the agent of Dominion lands within whose district the location is situated showing the quantity of coal mined, and payment shall at the same time be made of the royalty thereon at the following rates—namely, twenty cents per ton for anthracite coal, fifteen cents per ton for bituminous coal, and ten cents per ton for lignite coal. Even if no coal has been mined during any one month, the permittee shall send in a return to that effect.

A declaration as to the truth of the return shall be made before a Justice of the Peace, a Commissioner, or an agent of Dominion lands, but if the location is not situated within a radius of five miles of the place where such declaration can be taken, it will be sufficient if the permittee sends in an interim return of the coal mined during the month and pays the royalty thereon. In such case, the permittee shall every three months make a declaration before a Justice of the Peace, a Commissioner, or an agent of Dominion lands, as to the accuracy of such returns for the next preceding period of three months and send it to the agent of Dominion lands.

11. A permit may, in the discretion of the Minister of the Interior, be renewed from year to year so long as the land described therein is vested in the Crown, provided the permittee has complied with all the requirements of these regulations, and is operating his mine to the satisfaction of the Minister.

If at any time during the period the permit is in force the permittee desires to cease operations on his claim, he may do so on mak-

ing to the agent of Dominion lands a return of all coal mined between the date of his last return and the date upon which he ceased operations, paying the amount for royalty and ground rent, and returning the permit issued to him.

12. The permit while it remains in force shall give to the permittee sole and undisputed possession of the location therein described. In case the applicant for a permit is the owner of the surface rights of the location, no ground rent therefor shall be charged. If the surface of the location is not the property of the Crown, and the permittee desires an easement to the mine, it will be necessary for him to acquire it in accordance with the provisions in that behalf of the regulations for the disposal of coal lands approved by Orders in Council of the 17th September, 1889, and the 9th of July, 1892.

13. The permit shall be returned to the agent on the date specified therein.

14. No permit shall be issued to mine coal on lands which are not situated within territory designated from time to time by the Minister of the Interior as a coal mining district for the purposes of these regulations.

15. If a permittee fails to comply with the requirements of any of the provisions of these regulations, the permit may be forfeited by the Minister of the Interior.

REGULATIONS RESPECTING COAL LANDS WITHIN INDIAN RESERVES
IN MANITOBA AND THE NORTH-WEST TERRITORIES, DATED
15TH SEPTEMBER, 1888.

On the recommendation of the Superintendent General of Indian Affairs, and under the provisions of chapter 43 of the Revised Statutes of Canada, intituled "The Indian Act,"

His Excellency in Council has been pleased to make and does hereby make the following regulations respecting coal lands within Indian reserves in the Province of Manitoba and in the North-West Territories.

REGULATIONS.

The Indians owning reserves on which coal lands are situated may surrender the same to Her Majesty the Queen, in accordance with the provisions of "The Indian Act," aforesaid, to be sold for their benefit under the following conditions:—

Sec. 1. A royalty of ten cents on every ton of coal excavated shall be paid by the purchaser or purchasers of any coal lands situated within an Indian reserve.

Sec. 2. Coal lands situated on any reserve within the Cascade coal district which have been surrendered shall be sold at an upset price of \$12.50 per acre, cash, and the lands situated on Indian reserves within all other coal districts at an upset price of \$10 per acre, cash.

(a) Not more than three hundred and twenty acres shall be sold to one applicant.

(b) When there is more than one applicant for the same coal location the Superintendent General of Indian Affairs may invite competition between the several applicants, or offer the land for sale at public competition by tender or by auction as he may think expedient, at the upset price of coal lands in the district in which such coal location is situated.

(c) When applications are made to purchase coal locations situated outside of the organized coal districts, the Superintendent General of Indian Affairs may sell the same to the applicants at the price and on the terms which would apply if the lands were within an organized coal district.

Sec. 3. The boundaries beneath the surface of coal mining locations shall be the vertical planes or lines in which their surface boundaries lie.

Sec. 4. All the employees, not being Indians of the reserve, engaged in mining on an Indian reserve, shall be married men living with their wives and families at or in the vicinity of the mines.

Sec. 5. The purchaser or purchasers shall pay the wages of such number of constables, to be appointed by the Department, as may

be necessary to prevent all intercourse between the Indians resident upon a reserve and the employees engaged in mining, and to preserve order among the employees. This regulation, however, is not to apply to Indians resident upon such reserves who are legitimately employed in connection with the said mines, but it is intended for the purpose of excluding from the mines, Indians—male or female—not so employed, as well as to prevent employees other than Indians engaged in mining from visiting the portion of the reserve occupied by the Indians.

O. C., Oct. 11, 1887.

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B. N. A. ACT, 1867.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

POWERS OF THE PARLIAMENT.

Sec. 91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries.
13. Ferries between a Province and any British or foreign country or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings banks.

17. Weights and measures.
 18. Bills of exchange and promissory notes.
 19. Interest.
 20. Legal tender.
 21. Bankruptcy and insolvency.
 22. Patents of invention and discovery.
 23. Copyrights.
 24. Indians, and lands reserved for the Indians.
 25. Naturalization and aliens.
 26. Marriage and divorce.
 27. The criminal law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters.
 28. The establishment, maintenance and management of penitentiaries.
 29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.
- And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Sec. 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the Province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.

5. The management and sale of the public lands belonging to the Province, and of the timber and wood thereon.

6. The establishment, maintenance and management of public and reformatory prisons in and for the Province.

7. The establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the Province, other than marine hospitals.

8. Municipal institutions in the Province.

9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local, or municipal purpose.

10. Local works and undertakings other than such as are of the following classes:

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

(b) Lines of steamships between the Province and any British or foreign country;

(c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

11. The incorporation of companies with provincial objects.

12. The solemnization of marriage in the Province.

13. Property and civil rights in the Province.

14. The administration of justice in the Province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

16. Generally all matters of a merely local or private nature in the Province.

Sec. 108. The public works and property of each Province enumerated in the third Schedule to this Act shall be the property of Canada.

Sec. 109. All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the union, and all sums then due or payable for such lands, mines, minerals or royalties shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.

Sec. 117. The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country.

THE THIRD SCHEDULE (B. N. A. ACT).

PROVINCIAL PUBLIC WORKS AND PROPERTY TO BE THE PROPERTY OF CANADA.

1. Canals, with lands and water power connected therewith.
2. Public harbours.
3. Lighthouses and piers, and Sable Island.
4. Steamboats, dredges, and public vessels.
5. Rivers and lake improvements.
6. Railways and railway stocks, mortgages, and other debts due by railway companies.
7. Military roads.
8. Custom houses, post offices, and all other public buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government and known as ordinance property.
10. Armouries, drill sheds, military clothing and munitions of war, and lands set apart for general public purposes.

BOUNDARIES OF LABRADOR.

Boundaries of that part of Labrador which is a boundary of Newfoundland, as set forth in draft of letters patent passed under the great seal of the United Kingdom, constituting the office of Governor and Commander in Chief of the island of Newfoundland

and its dependencies. Dated 28th March, 1876 (see the Consolidated Statutes of Newfoundland, second series, 1892, page 1107).

"All the coast of Labrador from the entrance of Hudson's Straits to a line to be drawn due north and south from Anse Sablon on the said coast to the fifty-second degree of north latitude (which said island and coast together with the Island of Newfoundland, are hereinafter referred to as our said colony . . .).

BOUNDARIES OF ALASKA.

Boundaries of Alaska, as set forth in convention¹ for the cession of the Russian possessions in North America to the United States.

Concluded March 30th, 1867; ratifications exchanged at Washington, June 20th, 1867; proclaimed June 20th, 1867.

The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825, and described in Articles III. and IV. of said convention, in the following terms:—

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean.

IV. With reference to the line of demarcation laid down in the preceding article, it is understood:—

"1. That the island called Prince of Wales Island shall belong wholly to Russia" (now by this cession to the United States).

"2. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longi-

¹ (See "Treaties and Conventions concluded between the United States of America, and other powers, since July 4th, 1776; Washington, 1889").

tude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention), shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

The western limit within which the territories and dominion conveyed are contained, passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly south-west, through Behring's Straits and Behring's Sea, so as to pass midway between the north-west point of the island of St. Lawrence and the south-east point of Cape Chonkotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a south-westerly direction, so as to pass midway between the island of Atton and the Copper Island of the Kormandorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian.

BY TREATY BETWEEN THE UNITED STATES OF AMERICA AND GREAT BRITAIN, concluded 8th May, 1871, proclaimed 4th July, 1871, it is provided, Article XXVI.: "The navigation of the rivers Yukon, Porcupine, and Stikine (Stickeen), ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty, and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation."

1 Wm. & M. Chapter 30 (1688).

An Act to repeal the Statute made in the fifth year of King Henry IV., against Multiplying of Gold and Silver.

Whereas by a statute made an enacted in the Parliament held in the fifth year of the reign of King Henry IV., late king of England, it was, amongst other things, enacted in these words or to this effect,

namely, that none from thenceforth should use to multiply gold and silver or use the craft of multiplication; and if any the same do they should incur the pain of felony; and whereas since the making of the said statute divers persons have by their study industry and learning arrived at great skill and perfection in the art of melting and refining of metals, and otherwise improving them and their ores (which very much abound within this realm), and extracting gold and silver out of the same; but dare not exercise their said skill within this realm for fear of falling under the penalty of said statute, but exercise the said art in foreign parts to the great loss and detriment of this realm.

II. Be it therefore enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, that from henceforth the aforesaid branch, article or sentence contained in the said Act, and every word, matter and thing contained in the said branch or sentence shall be repealed, annulled, revoked and forever made void; anything in the said Act to the contrary in any wise whatsoever notwithstanding.

III. Provided always, and be it enacted by the authority aforesaid that all the gold and silver that shall be extracted by the aforesaid art of melting and refining of metals, and otherwise improving of them and their ores as before set forth, be from henceforth employed for no other use or uses whatsoever, but for the increase of moneys; and that the place hereby appointed for the disposal thereof, shall be their Majesties' mint within the Tower of London; at which place they are to receive the full and true value for their gold and silver so extracted from time to time, according to the contained fineness thereof; and so for any greater or lesser weight; and that none of the metal of gold and silver, so refined and extracted, be permitted to be used or disposed of in any other place or places within their Majesties' kingdom or dominions.

IV. Provided also, and be it further enacted, by the authority aforesaid, that no mine or copper, tin, iron or lead shall hereafter be adjudged, reputed, or taken to be a royal mine, although gold or silver may be extracted out of the same.

5 Wm. & M. Chapter 6 (1694).

An Act to Prevent Disputes and Controversies Concerning Royal Mines.

Whereas by a clause in one Act of Parliament made in the first year of their Majesties' reign, entitled "An Act to repeal the Statute made in the fifth year of King Henry IV., against Multiplying of Gold and Silver," it is amongst other things enacted, that no mines of tin, copper, iron or lead shall hereafter be adjudged, reputed, or taken to be a royal mine, although gold or silver may be extracted out of the same; but, notwithstanding the good provisions by the said statute to prevent the discouraging of their Majesties' good subjects who have mines of copper, tin, iron or lead in their soil from digging and opening the same, many doubts and questions have arisen upon the said statute, whereby great suits and troubles have arisen to many of the owners and proprietors of such mines. Wherefore, for the better explanation of the said statute:

II. Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same, that all and every person or persons, being subjects of the Crown of England, bodies politic or corporate that now are, or hereafter shall be the owner or owners, proprietor or proprietors of any mine or mines within this kingdom of England, Dominion of Wales, or town of Berwick-upon-Tweed, where any ore now is or hereafter shall be discovered, opened, found or wrought, and in which there is copper, tin, iron or lead, shall and may hold and enjoy the same mine or mines and ore, and continue in the possession thereof, and dig and work the said mine or mines or ore, notwithstanding that such mine or mines or ore shall be pretended or claimed to be a royal mine or royal mines; any law, usage or custom to the contrary notwithstanding.

III. Provided always, and be it enacted and declared that their Majesties, their heirs and successors, and all claiming any royal mines under them, shall and may have the ore of any such mine or mines in any part of the said kingdom of England, dominion of Wales or town of Berwick-upon-Tweed (other than tin ores in the counties of Devon and Cornwall), paying to the proprietors or owners of the said mine or mines wherein such ore is or shall be found, within thirty days after the said ore is or shall be raised and laid upon the

banks of the said mine or mines, and before the same be removed from thence the rates following (that is to say): for all ore washed, made clean, and merchantable, wherein is copper, the rate of 15s. per ton; and for all ore washed, made clean, and merchantable, wherein there is tin, the rate of 40s. per ton; and for all ore washed, made clean, and merchantable, wherein there is iron, the rate of 40s. per ton; and for all ore washed, made clean, and merchantable, wherein there is lead, the rate of 9s. per ton. And in default of payment of such respective sums as aforesaid, it shall and may be lawful for the owners and proprietors of the said mine or mines, wherein such ore is, are or shall be found, to sell and dispose of the said ore to his and their own uses; any law, statute or custom to the contrary notwithstanding.

IV. Provided always, that nothing contained in this Act shall alter, determine, or make void the charters granted to the tanners of Devon and Cornwall by any of the kings and queens of this realm, or any of the liberties, privileges and franchises of the said tanners, or to alter, determine or make void of law, customs or constitutions of the stannaries of Devon or Cornwall.

(See 9 Ann, c. 24, for the Regulation of Mines and Adventurers.)

55 George III., chapter 134 (1815).

An Act for Altering the Rate at which the Crown May Exercise Its Right of Pre-emption of Ore in which there is Lead.

[4th July, 1815.]

Whereas by an Act passed in the 15th year of the reign of their late Majesties, King William and Queen Mary, entitled "An Act to Prevent Disputes and Controversies Concerning Royal Mines," owners of mines within the kingdom of England, Dominion of Wales or town of Berwick-upon-Tweed, wherein any ore should be discovered and in which there is copper, tin, iron or lead, are authorized to hold and enjoy the same mines and ore, and to continue in possession thereof, and to dig and work the said mines, notwithstanding that such mines or ore should be pretended or claimed to be royal mines, subject to the right in their Majesties, their heirs and successors and all claiming in royal mines under them, to have the ore of any such mines in any part of the said kingdom of England, Dominion of Wales or town of Berwick-upon-Tweed, other than tin ore in the counties of Devon and Cornwall, paying to the proprietors or owners

of said mines certain rates contained in said Act in the manner and according to the limitation specified in the said recited Act; and whereas the rate therein directed to be paid for all ore wherein there is lead is, in consequence of the lapse of time and change of circumstances since the passing of the said Act, become inadequate to the increased expense of raising the same, and it is reasonable, therefore, that the same shall be increased, may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this Act, the rate which shall be paid by his Majesty, his heirs, successors, and all claiming any royal mines under them, in exercising the right of pre-emption given them by the said recited Act, so far as respects any ore wherein there is lead, shall be 25s. per ton for all ore, washed, made clean and merchantable, wherein there is lead, instead of the rate of 9s. per ton as by the said recited Act is directed, anything in the said recited Act to the contrary notwithstanding; and such increased rate shall be paid subject to the provisions and according to the regulations stated in the said recited Act, and now in force, with regard to the said original rate of 9s. per ton.

THE STICKEEN TERRITORIES.

On the 19th July, 1862, an order (see Appendix to Revised Statutes, B.C., 1871, pp. 189, *et seq.*) was promulgated by Her Majesty Queen Victoria, pursuant to Imperial Acts, 6 Vict. and 24 Vict., that certain territories adjacent to the colonies of British Columbia "but not being within the jurisdiction of the legislative authority of any of Her Majesty's possessions abroad, hereinafter called the Stickeen Territories, . . . shall comprise so much of the dominions of Her Majesty as are bounded to the west and south-west by the frontier of Russian-America (now Alaska), to the south and south-east by the boundary of British Columbia, to the east by the 125th meridian of west longitude, and to the north by the 62nd parallel of north latitude, and it is further ordered that the Governor for the time being of British Columbia shall be administrator of the Government of the said territories."

BOUNDARIES OF THE DOMINION OF CANADA.¹

"A synthesis of the boundaries of the various Provinces, as given above, furnishes the data for a description of the boundary of the Dominion as a whole" :—

"Beginning at the intersection of the shore of the Arctic Ocean by the 141st meridian, the Arctic and Atlantic Oceans form

the boundary as far as Hudson's Straits. Labrador, the Gulf of St. Lawrence and the Atlantic Ocean continue it as far as Cape Sable, including the Magdalene Islands, Anticosti, Prince Edward Island, Cape Breton, Sable Island, and all other islands within six leagues of the coast in the Gulf of St. Lawrence, and within forty leagues of the Atlantic coast of Nova Scotia. From Cape Sable to the mouth of the St. Croix River the boundary is a line drawn across the entrance of the Bay of Fundy, so as to give the Grand Manan group of islands and most of those in Passamaquoddy Bay to Canada. It follows the St. Croix to its source, runs due north to the St. John, and then passes by a very irregular route to the intersection of the south bank of the St. Lawrence by the 45th parallel. From that point it follows the navigable channel of the St. Lawrence to Lake Ontario, passes through that lake, the Niagara River, Lake Erie, Detroit River, Lake St. Clair, River St. Clair, Lake Huron and the lower part of the St. Mary River to the foot of the Neebish Rapids.

From the Neebish Rapids the boundary is continued up the St. Mary River to and through Lake Superior to the mouth of Pigeon River, thence by way of Rainy Lake and Rainy River to the north-west angle of the Lake of the Woods.

From the north-west angle of the Lake of the Woods the boundary runs due south to the 49th parallel and along that parallel to the Strait of San Juan de Fuca, and through it to the Pacific Ocean.

The western boundary of the Dominion is the Pacific Ocean and the Portland channel to the inland terminus of the latter, the Rocky Mountains to their intersection by the 141st meridian, and that meridian to the Arctic Ocean."

¹ (See Houston's Const. Doc. p. 280.)

BOUNDARIES OF THE NORTH-WEST TERRITORIES.

(Houston's C. D. p. 279.)

"This title¹ is applied to the whole region formerly known as 'Rupert's Land' and the 'North-West Territory,' except the Province of Manitoba and the District of Keewatin.² It is bounded on the south by the 49th parallel of north latitude; on the west by the Rocky Mountains, the 120th meridian, the 60th parallel of north latitude west to Alaska, and the 141st meridian to the Arctic Ocean; and on the east by the western boundaries of Manitoba³ and the District of Keewatin.⁴ Politically the 'North-West Territories' is a unit, there being but one Lieutenant-Governor and one Legislative Assembly for the whole territory; but the southern portion of it has been divided⁵ into four 'provisional districts'—Assiniboia, Alberta, Saskatchewan and Athabasca."

¹ See Dom. Stat. 43 Vict. c. 25; R. S. C. 1886, c. 50.

^a For the boundaries of Keewatin, see Dom. Stat., 39 Vict. c. 21; R. S. C. 1886, c. 53.

^b (See Houston's Const. Doc. p. 278.)

^c This is a line due north to the Arctic Ocean from "Cedar Portage" at the head of Lake Winnipegosis.

^d By order of the Governor-General in Council on the 8th of May, 1882: see Dom. Sess. Paper of 1882, No. 172.

BOUNDARIES OF UNNAMED DISTRICTS OF THE NORTH-WEST TERRITORIES.

By Order in Council of the 2nd of October, 1895, the whole of the unorganized and unnamed districts of the North-West Territories were divided into four provisional districts, to be named Ungava, Franklin, Mackenzie and Yukon. The boundaries of such districts were defined as follows:

1. Ungava—The district of Ungava, of indefinite extent, to be bounded as follows:

On the north by Hudson's Strait; on the west by the east coast of Hudson's Bay and James' Bay; on the south by the Province of Quebec; on the east by the boundary between Canada and the dependency of Newfoundland, on the coast of Labrador.

And with regard to the islands in Hudson's Strait, Hudson's Bay and James' Bay, it is to be understood that only those islands which lie within a distance of three sea miles from the coast are to be included in the district; all outside of this limit are to be under the control of the Dominion Government.

2. Franklin—The district of Franklin, of indefinite extent, to be bounded as follows:

Beginning at Cape Best, at the entrance to Hudson's Strait from the Atlantic; thence westerly through said Strait, Fox Channel, Gulf of Boothia, Franklin Strait, Ross Strait, Simpson Strait, Victoria Strait, Dease Strait, Coronation Gulf, and Dolphin and Union Strait, to a point in the Arctic Sea, in longitude about 125 degrees 30 west, and latitude about 71 degrees north; thence northerly, including Baring Land, Prince Patrick Island, and the Polynea Islands; thence north-easterly to the "farthest of Commander Markham's and Lieutenant Parr's sledge journey" in 1876, in longitude about 63½ degrees west, and latitude about 83½ degrees north; thence southerly through Robeson Channel, Kennedy Channel, Smith Sound, Baffin's Bay, and Davis' Strait to the place of beginning.

3. Mackenzie—The district of Mackenzie, about 538,600 square miles in extent, to be bounded as follows:—

Beginning at the mouth of the most westerly channel of the Delta of Mackenzie River, at the Arctic Sea, in longitude about 136 degrees 22 west (from Greenwich), and latitude 68 degrees 54 north;

thence southerly, along the eastern boundary of the district of Yukon to the 60th parallel of north latitude; thence due east on said parallel, for a distance of about 17 miles, to its intersection with the 120th meridian; thence due east on the 32nd correction line of the Dominion lands system of township surveys (very nearly on the 60th parallel), for a distance of about 790 miles, to its intersection with the 100th meridian; thence due north, on said meridian, for a distance of about 530 miles, to the Arctic coast and termination of the mainland of the continent (in latitude about 67 degrees 48 north); thence westerly following the windings and sinuosities of said coast, and including all islands within a distance of three geographical miles, to the place of beginning.

4. Yukon—The district of Yukon, about 225,000 square miles in extent, to be bounded as follows:—

Beginning at the intersection of the 141st meridian of west longitude, from Greenwich, with a point on the coast of the Arctic Sea, which is approximate north latitude 69 degrees 39, and named on the Admiralty Charts "Demarcation Point"; thence due south on said meridian (which is also the boundary line between Canada and Alaska for a distance of about 650 miles, to a point in latitude about 60 degrees 10 north, at which it will intersect the disputed boundary between Canada and the United States, on the north Pacific coast; thence in an easterly direction, along the said undetermined boundary, for a distance of about 55 miles (in a straight line to its intersection with the 60th parallel of north latitude; thence due east along the parallel of latitude (which is also the north boundary of British Columbia), for a distance of about 550 miles, to the Liard River, in approximate longitude 123 degrees 30 west; thence northerly, along the middle line of said river, for a distance of about ten miles, till opposite the highest part of the range of mountains which abuts upon the river near the mouth of Black River; thence to follow the summit of said range in a north-westerly direction to the southernmost source of the Peel River; thence to follow northward the summit of the main range of mountains which runs approximately parallel to Peel River, on the west, as far as the intersection of the said range with the 136th meridian; thereafter to run due north to the Arctic Ocean, or to the westernmost channel of the Mackenzie Delta, and along that channel to the Arctic Ocean; thence north-westerly, following the windings of the Arctic coast (termination of the mainland of the continent) including Herschel Island, and all other islands which may be situated within three geographical miles, to the place of beginning.

Provided, that in respect of that part of the line between the Liard River and the southernmost source of the Peel River, the sum-

mit to be followed is the watershed summit separating streams entering the Liard River below Black River, or flowing directly into the Mackenzie further north, from streams flowing westward either to the Yukon or to upper branches of the Liard River.

Provided that in respect to the part of the boundary described as following northward the main range of mountains on the west side of Peel River, the line shall run along the watershed between streams flowing eastwardly to the Peel River, and those flowing westwardly to branches of the Yukon, Porcupine, etc., except where such watershed shall be more than 20 miles distant from the main stream of the Peel, when the highest range within that distance shall be the boundary.

It was further ordered that there be added to the district of Athabaska, the territory colored yellow on a map annexed to the said order (about 143,500 square miles in extent), making the total area about 265,000 square miles, and that the district be bounded as follows:—

On the west by the Province of British Columbia; on the south by the districts of Alberta and Saskatchewan; on the east by the 100th meridian of west longitude; on the north by the 32nd correction line of the Dominion lands township system of survey, which is very nearly on the 60th parallel of north latitude.

It was, moreover, recommended in said order that at the next session of Parliament a bill be introduced having for its object the addition to the District of Keewatin, of the territory, containing about 470,000 square miles, bounded as follows:—

Beginning at the point of intersection of the northern boundary of the Province of Manitoba and the western shore of Lake Winnipeg; thence northerly along the western shore of said lake and of Nelson River, to the point where the latter is intersected by the 18th correction line of the Dominion lands survey system; thence due west along the said correction line to a point at which it will intersect the 100th meridian of west longitude; thence due north on said meridian to the termination of the mainland of the continent, on the coast of the Arctic Sea, in latitude about 67 degrees 50 north; thence northerly and southerly following the said coast to the mouth of Great Fish River, at Lake Franklin; thence northerly to Franklin Strait; thence south-easterly, following the west shores of the Gulf of Boothia to Rae's Isthmus; thence north-easterly, along the shore of said gulf to Cape Inglefield; thence along the southerly shore of Fury and Hecla Strait to the head of Fox Channel; thence southerly and westerly along the shores of said channel to the site of "Fort Hope," at the west end of Repulse Bay; thence south-westerly, following the windings and sinuosities of the coast of Hudson's Bay to

the mouth of Seal River; thence easterly and southerly to "York Factory" at Port Nelson; thence north-easterly and south-easterly to Cape Henrietta Maria; thence southerly along the west shore of James' Bay to the mouth of the Albany River; thence westerly along the middle or deep water channel of said river, which is the northern boundary of the Province of Ontario, defined by the Imperial Boundary Act of 12th August, 1889, to Lake St. Joseph; thence westerly, by a middle line through said lake, to its source on the height of land to the east end of Lac Seul, or Lonely Lake; thence westerly, by a middle line through said lake, to English River; thence westerly, by a middle line through said river and its lake-like expansions, to its injunction with the Winnipeg River; thence along the middle line of said river to the eastern boundary of the Province of Manitoba, thence due north, along the said eastern boundary, to the point at which it intersects the north boundary of said Province; thence due west, on said northern boundary, to the place of beginning.

Vide Canada Gazette, vol. xxix., p. 685; Vol. I-D.

BOUNDARIES OF MANITOBA.

(See Houston's Const. Doc. p. 278.)

"It is agreed that a line drawn from the most north-western point of the Lake of the Woods along the 49th parallel of north latitude, or if the said point shall not be in the 49th parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountain."¹

¹ As defined by the London Convention of 1818.

57-58 VICTORIA (DOM.) CHAPTER XXX.

An Act respecting the Utilization of the Waters of the North-West Territories for Irrigation and other purposes (as amended in 1895 by 58-59 Vict. c. 33).

Assented to 23rd July, 1894.

HER MAJESTY, by and with the consent of the Senate and House of Commons, enacts as follows:—

1. This Act may be cited as "**The North-West Irrigation Act.**"
2. In this Act, unless the context otherwise requires,—

(a) The expression "Minister" means the Minister of the Interior;

Sub-section (b) repealed and following substituted:

(b) "The expression 'agent' means the agent of Dominion lands for the district in which the land or water is situated."

(c) The expression "Dominion land surveyor" means a surveyor duly authorized, under the provisions of "The Dominion Lands Act," to survey Dominion lands;

(d) Repealed and following substituted:

(d) "The expression 'company' means any incorporated company, the objects and powers of which extend to or include the construction or operation of irrigation or other works under this Act, or the carrying on thereunder of the business of the supply or the sale of water for irrigation or other purposes, and includes any person who has been authorized, or has applied for authority to construct and operate such works or carry on such business, or who has obtained a license under section 11 of this Act, and also includes any irrigation district incorporated under an Ordinance of the North-West Territories."

(e) The expression "works" means and includes any dykes, dams, weirs, floodgates, breakwaters, drains, ditches, basins, reservoirs, canals, tunnels, bridges, culverts, cribs, embankments, headworks, flumes, aqueducts, pipes, pumps and any contrivance for carrying or conducting water or other works which are authorized to be constructed under the provisions of this Act;

(f) The expression "duty of water" means the area of land that a unit of water will irrigate, which unit is the discharge of one cubic foot of water per second.

3. This Act shall apply to and be in force throughout the North-West Territories.

Section 4 of 57-58 Vict. c. 30, was repealed by 58-59 Vict. c. 33, s. 2, and the following section substituted therefor:

"4. The property in and the right to the use of all the water at any time in any river, stream, watercourse, lake, creek, ravine, canon, lagoon, swamp, marsh or other body of water shall, for the purposes of this Act, be deemed to be vested in the Crown, unless and until, and except only so far as some right therein, or to the use thereof, inconsistent with the right of the Crown, and which is not a public right or a right common to the public, is established; and save in the exercise of any legal right existing at the time of such diversion or use, no person shall divert or use any water from any river, stream, watercourse, lake, creek, ravine, canon, lagoon, swamp,

marsh or other body of water, otherwise than under the provisions of this Act."

5. Except in pursuance of some agreement or undertaking existing at the time of the passing of this Act, no grant shall be hereafter made by the Crown of lands or of any estate, in such terms as to vest in the grantee any exclusive or other property or interest in, or any exclusive right or privilege with respect to any lake, river, stream or other body of water, or in or with respect to the water contained or flowing therein, or the land forming the bed or shore thereof.

6. After the passing of this Act no right to the permanent diversion or to the exclusive use of the water in any river, stream, watercourse, lake, creek, ravine, canon, lagoon, swamp, marsh or other body of water shall be acquired by any riparian owner or any other person by length of use or otherwise than as it may be acquired or conferred under the provisions of this Act, unless it is acquired by a grant made in pursuance of some agreement or undertaking existing at the time of the passing of this Act.

Section 7 of 57-58 Vict. c. 30, was repealed by 58-59 Vict. c. 33, s. 3, and the following section substituted therefor :

"7. Except for domestic purposes, as hereinafter described, every person who holds water rights of a class similar to those which may be acquired under this Act, or who, with or without authority, has constructed or is operating works for the utilization of water, shall obtain a license or authorization under this Act before the first day of July, one thousand eight hundred and ninety-six.

(2) If such license or authorization is obtained within the time limited, the exercise of such rights may thereafter be continued, and such works may be carried on under the provisions of this Act; otherwise such rights or works, and all the interest of such person therein, shall, without any demand or proceeding, be absolutely forfeited to Her Majesty, and may be disposed of or dealt with as the Governor in Council sees fit.

(3) The application of such license or authorization shall be made in the same manner as for other licenses or authorization under this Act, and the like proceedings shall be had thereon, and the like information furnished in connection therewith."

8. Any water the property in which is vested in the Crown may be acquired for domestic irrigation or other purposes, upon application therefor as hereinafter provided; and all applications made in accordance with the provisions of this Act shall have precedence,

except applications under section 7, according to the date of filing them with the agent, if for the same purpose, but not otherwise.

(2) The purposes for which the right to water may be acquired are of three classes, namely: First, domestic purposes, which shall be taken to mean household and sanitary purposes and the watering of stock, and all purposes connected with the working of railways or factories by steam, but shall not include the sale or barter of water for such purposes; second, irrigation purposes; and, third, other purposes.

(3) Applications shall have precedence in this order irrespective of the date of filing, so that all applications for domestic purposes shall have precedence of all those for purposes within the third class.

9. No application for any purpose shall be granted where the proposed use of the water would deprive any person owning lands adjoining the river, stream, lake, or other source of supply of whatever water he requires for domestic purposes.

10. When any person abandons or ceases to use any waters acquired by him for the purposes for which they were acquired, or wastes such waters, his right to use them shall cease.

The remaining sections of the Act from 11 to 27, inclusive, relate to the method of obtaining a license to do the necessary preliminary work in connection with the location of such works, etc., etc.

28. Any company having the right to the use of water for irrigation or other purposes shall dispose of any surplus water flowing in its works which is not being utilized or used for the purposes authorized, to any person applying therefor for irrigation purposes, and tendering payment for one month in advance at the regular prices.

29. No company undertaking to sell water conveyed by its works shall, subsequent to the first four years after the construction of such works as are necessary to convey the water to the user, discriminate between the users of such water regarding the price thereof.

(2) If from any cause the whole amount of water agreed to be supplied by a company is not available, then each user shall have furnished to him by the company so much water as shall bear to the available water the same proportion as his usual supply bears to the whole amount agreed to be furnished.

32. Under this Act the discharge of one cubic foot of water per second shall be the unit of measurement of flowing water, and the cubic foot or acre foot the unit of measurement of quantity. The acre foot is equivalent to forty-three thousand five hundred and sixty cubic feet.

46. All regulations made and forms prescribed by the Governor in Council under this Act shall be published in the *Canada Gazette*, and shall be laid before both Houses of Parliament within the first fifteen days of the session next after the date thereof.

Minerals in Rocky Mountain Park. Lands containing coal or other minerals, including lands in the Rocky Mountain's Park, shall not be subject to the provisions of this Act respecting Sale or Homestead Entry, but the Governor-General in Council may, from time to time, make regulations for the working and development of mines on such lands, and for the sale, leasing, licensing or other disposal thereof; Provided, however, that no disposition of mines or mining interests in the said park shall be for a longer period than twenty years, renewable, in the discretion of the Governor in Council, from time to time, for further periods of twenty years each, and not exceeding in all sixty years. 55-56 Vict. (1892) c. 15, s. 5, repealing section 47 of "The Dominion Lands Act," R. S. C. (1886) c. 54, and substituting the above therefor.

(Selected sections from) An Act to consolidate and amend the Acts respecting Land in the Territories.

Assented to 23rd July, 1894.

HER MAJESTY, by and with consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as "**The Land Titles Act, 1894.**"

2. (a) The expression "land" means lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, and whether such estate or interest is legal or equitable, together with all paths, passages, ways, watercourses, liberties, privileges, easements, mines, minerals and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being, unless any such are specially excepted.

(c) The expression "transfer" means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise.

(d) The expression "transferor" means the person by whom any interest or estate in land is transferred, whether for value or otherwise, and the expression "transferee" means the person to whom any interest or estate in land is transferred, whether for value or otherwise.

(e) The expression "mortgage" means any charge on land created merely for securing a debt, or a loan.

(f) The expression "mortgagee" means the owner of a mortgage; and the expression "mortgagor" means the owner or transferee of land, or of any estate or interest in land pledged as security for a debt or a loan.

(g) The expression "encumbrance" means any charge on land created or effected for any purpose whatever, inclusive of mortgage, mechanics' liens, when authorized by statute or ordinance, and executions against lands, unless expressly distinguished.

(h) The expression "encumbrancer" means the owner of any land or of any estate or interest in land subject to any encumbrance; and the expression "encumbrancee" means the owner of any encumbrance.

(i) The expression "lunatic" means any person found by any competent tribunal or commission *de lunatico inquirendo*, to be a lunatic.

(j) The expression "person of unsound mind" means any person not an infant, who not having been found to be a lunatic, has been found on inquiry to be incapable, from infirmity of mind, of managing his own affairs.

(k) The expression "instrument" means any grant, certificate of title, conveyance, assurance, deed, map, will, probate or exemplification of will, letters of administration, or an exemplification thereof, mortgage or encumbrance, or any other document in writing relating to the transfer of or other dealing with land or evidencing title thereto.

(l) The expression "register" means the register of titles to land kept in accordance with this Act.

(m) The expression "registration" means (1) the bringing of lands under the provisions of this Act; and (2) the entering upon

the certificate of title of a memorandum authorized by this Act of any document; and "filing" means the entering in the day book of any instrument.

(n) The expression "memorandum" means the endorsement upon the certificate of title and on the duplicate copy thereof of the particulars of any instrument presented for registration.

(o) "Certificate of title" means the certificate (Form E) granted by the registrar and entered and kept in the register; "duplicate" or "duplicate certificate" means the duplicate, delivered or issued to the person entitled thereto, of the certificate of title in the register.

(p) The expression "registrar" means a registrar of titles, or any deputy registrar or inspector of titles when acting as registrar.

(q) The expression "Territories" means the North-West Territories, the district of Keewatin and all other territories of Canada.

(r) The expression "Court" means any Court authorized to adjudicate in the Territories in civil matters in which the title to real estate is in question.

(s) The expression "Court of Appeal" means the Court of Appeal herein constituted.

(t) The expression "Judge" means an official authorized in the Territories to adjudicate in civil matters in which the title to real estate is in question.

(u) The expression "transmission" applies to change of ownership consequent upon death, lunacy, sale under execution, order of Court, or other act of law, sale for arrears of taxes, or upon any settlement or any legal succession in case of intestacy.

(v) The expression "grant" means any grant of Crown land, whether in fee or for years, and whether direct from Her Majesty or pursuant to the provisions of any statute.

(w) The expressions "endorsed" and "endorsement" apply to anything written upon any instrument, or upon any paper attached thereto by the registrar.

(x) The expression "possession" when applied to persons claiming title to land, means also alternatively the reception of the rents and profits thereof.

(g) The expression "affidavit" includes an application when made by a person entitled to affirm.

DESCENT OF LAND.

3. Land in the Territories shall go to the personal representatives of the deceased owner thereof in the same manner as personal estate now goes, and be dealt with and distributed as personal estate.

4. No words of limitation are necessary in any transfer of any land in order to transfer all or any title therein, but every instrument transferring land shall operate as an absolute transfer of all such right and title as the transferor has therein at the time of its execution, unless a contrary intention is expressed in the transfer; but nothing herein contained shall preclude any transfer from operating by way of estoppel; and hereafter the introduction of any words of limitation into any transfer or devise of any land, shall have the like force and meaning as the same words of limitation would have if used by way of limitation of any personal estate and no other.

5. No devise shall be valid or effectual as against the personal representative of the testator, until the land affected thereby is transferred to the devisee thereof, by the personal representative of the devisor, saving and excepting such devises as are made by the testator to his personal representative, either in his representative capacity or for his own use.

6. No widow whose husband died on or after the first day of January, one thousand eight hundred and eighty-seven, shall be entitled to dower in the land of her deceased husband; but she shall have the same right in such land as if it were personal property.

7. No husband whose wife died on or after the first day of January, one thousand eight hundred and eighty-seven, shall be entitled to any estate by the curtesy in the land of his deceased wife; but he shall have the same right therein as a wife has in the personal property of her deceased husband.

8. Whenever land is transferred to a man and his wife, the transferees shall take according to the tenor of the transfer, and they shall not take by entireties unless it is so expressed in the transfer.

9. A man may make a valid transfer of land to his wife, and a woman may make a valid transfer of land to her husband, without in either case the intervention of a trustee.

10. Any devise or limitation which heretofore would have created an estate tail shall transfer absolute ownership, or the greatest estate that the deviser or transferor had in the land; and no estate in fee simple shall be changed into any limited fee or fee tail, but the land, whatever form of words is used in any transfer or transmission or dealing, shall, except as hereinafter otherwise provided, be and remain an absolute estate in the owner for the time being.

11. A married woman shall, in respect of land, acquired by her on or after the first day of January, one thousand eight hundred and eighty-seven, have all the rights and be subject to all the liabilities of a *feme sole* and may, in all respects, deal with land as if she were unmarried.

16. For the purposes of this Act, there shall be in the North-West Territories five land registration districts, respectively known and described as follows:—

1. Assiniboia Land Registration District, being composed of the provincial district of Assiniboia, as defined by an Order in Council dated the 8th day of May, one thousand eight hundred and eighty-two.

2. The South Alberta Land Registration District, being composed of so much of the provincial district of Alberta as lies to the south of the ninth correction line.

3. The North Alberta Land Registration District, being composed of so much of the said provincial district of Alberta as lies to the north of the said ninth correction line.

4. The West Saskatchewan Land Registration District, being composed of so much of the provincial districts of Saskatchewan as lies to the west of the dividing line between the tenth and eleventh ranges west of the third principal meridian.

5. The East Saskatchewan Land Registration District, being composed of so much of the said provincial districts of Saskatchewan as lies to the east of the said dividing line, between the tenth and eleventh ranges west of the third principal meridian.

17. The Governor in Council may, from time to time, by proclamation, as the settlement of the country and the exigencies of the public service require, constitute any other portion of the territories a land registration district, and declare by what local name the same

shall be known and designated, and may also change the boundaries of existing districts.

19. In each registration district at such place as the Governor in Council determines, there shall be an office to be called a Land Titles Office.

35. Every grant shall be deemed and taken to be registered under the provisions and for the purpose of this Act as soon as the same has been marked by the registrar with the folio and volume on, and in which it is embodied in the register, and every other instrument shall be deemed to be registered as soon as a memorandum of it has been entered in the register upon the folio constituted by the existing grant or certificate of title of such land.

36. Instruments registered in respect of or affecting the same land, shall be entitled to priority the one over the other according to the time of registration, and not according to the date of execution; and the registrar, upon registration thereof, shall retain the same in his office; and so soon as registered, every instrument shall become operative according to the tenor and intent thereof, and shall thereupon create, transfer, surrender, charge or discharge, as the case may be, the land or the estate or interest therein mentioned in the instrument.

39. Whenever any land is granted in the Territories by the Crown, the letters patent therefor, when issued, shall be forwarded from the office whence the same was issued to the registrar of the registration district in which the land so granted is situated, and the registrar shall retain the letters patent in his office; and a certificate of title, as provided by this Act, with any necessary qualification, shall be granted to the patentee.

2. A duplicate of such certificate of title shall be issued to the patentee free of all fees and charges by this Act provided to be paid, if at the time of the issue thereof there are no encumbrances or other instruments affecting the land registered in the Land Titles Office; but if there are any instruments registered which encumber or affect the title, upon the payment of such fees as are fixed, or may be from time to time fixed, by the Governor in Council.

3. The notification to the Hudson's Bay Company by the Minister of the Interior under the provisions of the "Dominion Lands Act" of the survey and confirmation of the survey of any township, or any

part of a township, shall be accepted by the registrar as equivalent to, and dealt with by him in all respects in the same manner as if the said notification were letters patent to and in favour of the said company granting to the said company, in fee simple, the sections or portions of sections to which they are entitled in such townships or parts of townships under the provisions of the "Dominion Lands Act."

4. Such notifications, except any notification which issued prior to the twenty-second day of May, one thousand eight hundred and eighty-eight, and which may be registered by the company with the registrar of the district within which the land affected thereby is situated, shall be issued in duplicate, one to be sent to the said company, and one to the registrar of the district.

5. A notification to the registrar from the Minister of the Interior that the land described therein has been granted to the Canadian Pacific Railway Company, or to any other railway company entitled to Dominion lands under the authority of an Act of Parliament, shall be accepted by the registrar and dealt with by him in all respects as if the same were letters patent in favour of such company. The notification shall state the nature of the grant and shall specify any mines, minerals, easements or rights which are excepted from the grant.

40. The owner of any estate or interest in any land, whether legal or equitable, letters patent for which issued from the Crown before the first day of January, one thousand eight hundred and eighty-seven, or which otherwise had prior to that date passed from the Crown, may apply to have his title registered under the provisions of this Act.

2. If at the time of the grant of the certificate of title, there are no registered encumbrances or conveyances affecting such land, the certificate may be granted to the patentee, upon payment of such fees as are fixed in that behalf by tariff made from time to time by the Governor in Council, but no fees shall be payable therefor under the provisions of section one hundred and fifteen of this Act.

EFFECT OF REGISTRATION.

53. In every instrument transferring, encumbering or charging any land for which a certificate of title has been granted, there shall be implied the following covenant by the transferor or encumbran-

cer, that is to say: That the transferor or encumbrancer will do such acts and execute such instruments as, in accordance with the provisions of this Act, are necessary to give effect to all covenants, conditions and purposes expressly set forth in such instrument, or by this Act, declared to be implied against such persons in instruments of a like nature.

54. After a certificate of title has been granted for any land, no instrument, until registered under this Act, shall be effectual to pass any estate or interest in any land (except a leasehold interest for three years or for a less period), or render such land liable as security for the payment of money; but, upon the registration of any instrument in manner hereinbefore prescribed, the estate or interest specified therein shall pass, or, as the case may be, the land shall become liable as security, in manner and subject to the covenants, conditions and contingencies set forth and specified in such instrument, or by this Act declared to be implied in instruments of a like nature.

55. The owner of land, for which a certificate of title has been granted, shall hold the same subject (in addition to the incidents implied by virtue of this Act) to such encumbrances, liens, estates or interests, as are notified on the folio of the register which constitutes the certificate of title, absolutely free from all other encumbrances, liens, estates or interests whatsoever, except in case of fraud wherein he has participated or colluded, and except the estate or interest of an owner claiming the same land under a prior certificate of title granted under the provisions of this Act.

2. Such priority shall, in favour of any person in possession of land, be computed with reference to the grant or earliest certificate of title under which he or any person through whom he derives title, has held such possession.

56. The land mentioned in any certificate of title granted under this Act shall, by implication, and without any special mention therein, unless the contrary is expressly declared, be subject to—

(a) Any subsisting reservations or exceptions contained in the original grant of land from the Crown;

(b) Any municipal charges, rates or assessments on the land for the year current at the date of the certificate of title, or which are thereafter imposed on the land, or which have theretofore been

imposed for local improvements and which are not then due and payable, and any charges, rates or assessments in respect of which the right of the municipality to have recourse against the land is not matured, not exceeding three years' charges, rates or assessments in the whole ;

(c) Any public highway or right of way or other public easement, howsoever created upon, over or in respect of the land ;

(d) Any subsisting lease or agreement for a lease for a period not exceeding three years, where there is actual occupation of the land under the same ;

(e) Any decrees, orders or executions against or affecting the interest of the owner in the land, which have been registered and maintained in force against the owner ;

(f) Any right of expropriation which may, by statute or ordinance, be vested in any person, body corporate, or Her Majesty.

57. Every certificate of title granted under this Act shall (except in case of fraud, wherein the owner has participated or colluded), so long as the same remains in force and uncanceled under this Act, be conclusive evidence in all Courts as against Her Majesty and all persons whomsoever, that the person named therein is entitled to the land included in the same, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in the next preceding section, except so far as regards any portion of land, by wrong description of boundaries or parcels included in such certificate of title, and except as against any person claiming under a prior certificate of title granted under this Act in respect of the same land ; and for the purpose of this section that person shall be deemed to claim under a prior certificate of title who is holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate of title granted, notwithstanding that such certificate of title has been surrendered and a new certificate of title has been granted upon any transfer or other instrument.

58. A purchaser, mortgagee or encumbrancee for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof.

59. After the certificate of title for any land has been granted, no instrument shall be effectual to pass any interest therein, or to

render the land liable as security for the payment of money as against any *bona fide* transferee of the land under this Act, unless such instrument is executed in accordance with the provisions of this Act; and is duly registered thereunder; and the registrar shall have power to decide whether any instrument, which is presented to him for registration, is substantially in conformity with the proper form in the schedule to this Act, or not, and to reject any instrument which he may decide to be unfit for registration.

60. No memorandum or entry shall be made upon a certificate of title, or upon the duplicate thereof of any notice of trusts, whether expressed, implied or constructive; but the registrar shall treat any instrument containing any such notice as if there was no trust; and the trustee or trustees therein named shall be deemed to be the absolute and beneficial owners of the land for the purposes of this Act.

TRANSFERS.

61. When land, for which a certificate of title has been granted, is intended to be transferred or any right of way or other easement is intended to be created or transferred, the owner may execute a transfer in the form "J," in the schedule to this Act, which transfer shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such description as is sufficient to identify the same, and shall contain an accurate statement of the estate, interest or easement intended to be transferred or created, and a memorandum of each lease, mortgage and other encumbrance to which the land is subject.

62. Whenever any easement or any incorporeal right in or over any land, for which a certificate of title has been granted, is created for the purpose of being annexed to or used and enjoyed together with other lands, for which a certificate of title has also been granted, the registrar shall make a memorandum of the instrument creating such easement or incorporeal right upon the folio of the register which constitutes the existing certificate of title of such other land, and upon the duplicate thereof.

63. If a transfer purports to transfer the transferor's interest in the whole or part of the land mentioned in any certificate of title, the transferor shall deliver up the duplicate certificate of title of the land, and the registrar shall make a memorandum thereon, and upon the certificate of title in the register cancelling the same, either

wholly or partially, according as the transfer purports to transfer the whole or part only of the interest of the transferor in the said land, and setting forth the particulars of the transfer.

64. The registrar, upon cancelling any certificate of title, either wholly or partially, pursuant to any transfer, shall grant to the transferee a certificate of title of the land mentioned in the transfer, and issue to the transferee a duplicate thereof; and the registrar shall retain every transfer and cancelled duplicate certificate of title; but in the case of a partially cancelled certificate of title, the registrar shall return the duplicate to the transferor after the memorandum partially cancelling the same has been made thereon and upon the certificate of title in the register; or may, whenever required thereto by the owner of an unsold portion of land, in any partially cancelled certificate of title, or where such a course appears to the registrar more expedient, grant to such owner a certificate of title for such portion of which he is the owner, upon the delivery of the partially cancelled duplicate certificate of title to the registrar, to be cancelled and retained.

65. In every instrument transferring land, for which a certificate of title has been granted, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee, that is to say: That the transferee will pay the principal money, interest, annuity or rent charge secured by the mortgage or encumbrance, after the rate and at the time specified in the instrument creating the same, and will indemnify and keep harmless the transferor from and against the principal sum or other moneys secured by such instrument, and from and against the liability in respect of any of the covenants therein contained, or under this Act implied, on the part of the transferor.

LEASES.

67. When any land, for which a certificate of title has been granted, is intended to be leased or demised for a life or lives, or for a term of more than three years, the owner shall execute a lease in the form "K" in the schedule to this Act, and every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such other description as is necessary to identify the land; and a right for the lessee to purchase the land therein described may be stipulated in the instrument; and in case the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in the instrument, the lessor shall be bound to execute a trans-

fer to such lessee of the land, and to perform all necessary acts, by this Act prescribed, for the purpose of transferring the land to the purchaser ; Provided always, that no lease of mortgaged or encumbered land shall be valid and binding against the mortgagee or encumbrancee, unless the mortgagee or encumbrancee has consented to the lease prior to the same being registered, or subsequently adopts the same.

68. In every lease, unless a contrary intention appears therein, there shall be implied the following covenants by the lessee, that is to say :

(a) That he will pay the rent thereby reserved, at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised land during the continuance of the lease ;

(b) That he will, at all times during the continuance of the lease, keep and, at the termination thereof, yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest, or other casualty, and reasonable wear and tear excepted.

69. In every lease, unless a different intention appears therein, there shall also be implied the following powers in the lessor, that is to say :

(a) That he may, by himself or his agents, enter upon the demised land and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair the same, in so far as the tenant is bound to do so ;

(b) That in case the rent or any part thereof is in arrear for the space of two calendar months, or in case default is made in the fulfilment of any covenant, whether expressed or implied in such lease, on the part of the lessee, and is continued for the space of two calendar months, or in case the repairs required by such notice, as aforesaid, are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land.

70. In any such case the registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor, or his transferee by a legal proceeding, shall make a memorandum of the same upon the certificate of title, and upon the duplicate thereof, when

presented to him for that purpose, and the estate of the lessee in such land shall thereupon determine, but without releasing the lessee from his liability in respect of the breach of any covenant in the lease, expressed or implied ; and the registrar shall cancel the lease if delivered up to him for that purpose.

71. Whenever, in any lease made under this Act, the forms of words in column one of the form "I" in the schedule to this Act, and distinguished by any number therein, are used, the lease shall be taken to have the same effect, and be construed as if there had been inserted therein the form of words contained in column two of the said form, and distinguished by the same number ; and every such form shall be deemed a covenant by the covenantor with the covenantee and his transferee, binding the former and his heirs, executors, administrators and transferees ; but it shall not be necessary in any such lease to insert any such number ; and there may be introduced into or annexed to any of the forms in the first column any expressed exceptions from the same or expressed qualifications thereof, respectively, and the like exceptions or qualifications shall be taken to be made from or in corresponding forms in the second column.

72. Whenever any lease or demise, which is required to be registered by this Act, is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law, upon the production of the surrender, in the form "M" in the schedule to this Act, to the registrar, he shall make a memorandum of the surrender upon the certificate of title in the register, and upon the duplicate certificate ; and when the memorandum has been so made, the estate or interest of the lessee in the land shall vest in the lessor, or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed ; Provided, that no lease subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.

MORTGAGES AND ENCUMBRANCES.

73. Whenever any land, for which a certificate of title has been granted, is intended to be charged or made security in favour of any mortgagee, the mortgagor shall execute a mortgage in the form "X" in the schedule to this Act or to the like effect, and whenever any such land is intended to be charged with or made security for the

payment of an annuity, rent-charge or sum of money, in favour of any encumbrancee, the encumbrancer shall execute an encumbrance in the form "O" in the schedule to this Act, or to the like effect; and every such instrument shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall, for description of the land intended to be dealt with, refer to the certificate of title on which the estate or interest is held, or shall give such other description as is necessary to identify the land, together with all mortgages or encumbrances affecting the same, if any; and a memorandum of the mortgage or encumbrance shall be made upon the certificate of title in the register, and upon the duplicate certificate.

2. Provided, that any mortgage or other encumbrance created by any party rightfully in possession of land prior to the issue of the grant, may be filed in the office of the registrar, who shall, on registering such grant, enter in the register and endorse upon the duplicate certificate of title before issuing the same to the applicant owner thereof, a memorandum of such mortgage or encumbrance; and when so entered and endorsed the said mortgage or encumbrance shall be as valid as if made subsequent to the issue of the grant; and if more than one mortgage or encumbrance are filed they shall be registered in the order of the time they have been filed in the said office.

74. A mortgage or encumbrance under this Act shall have effect as security, but shall not operate as a transfer of the land thereby charged, and if default is made in payment of the principal sum, interest, annuity or rent charged, or any part thereof thereby secured or in the observance of any covenant expressed in any mortgage or encumbrance registered under this Act, or that is herein declared to be implied in such instrument, and such default is continued for the space of one calendar month, or for such longer period of time as is expressly limited for that purpose in such instrument, the mortgagee or encumbrancee may, by direction of the Judge, give to the mortgagor or encumbrancer notice in writing to pay, within a time to be specified in the notice, the money then due or owing on the mortgage or encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that all competent rights and powers will be resorted to unless such default is remedied, or, where the mortgagor or encumbrancer can not be found, may give the notice in that behalf to the mortgagor or encumbrancer in such manner as the Judge on summary application *ex parte* directs.

75. In default of compliance with the terms of such notice the mortgagee or encumbrancee, under and subject to the direction of the Judge, may sell the land so mortgaged or encumbered, or any part thereof, and all the estate or interest therein of the mortgagor or encumbrancer, and either altogether or in lots by public auction or by private contract, or by both modes of sale, and subject to such conditions as the Judge directs, and to make and execute all instruments as are necessary for effecting the sale thereof, and all sales, contracts, matters and things hereby authorized shall be as valid and effectual as if the mortgagor or encumbrancer had made, done or executed the same; and the receipt or receipts, in writing, of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land, estate or interest, or of any portion thereof, for so much of his purchase money as is thereby expressed to be received; and no purchaser shall be answerable for the loss, misapplication or non-application, or be obliged to see to the application of the purchase money by him paid, nor shall he be concerned to enquire as to the fact of any default having been made, or notice having been given as aforesaid; and before a certificate of title shall be granted to the purchaser, the purchase money arising from the sale of the land shall be paid into Court by the purchaser, and shall be, by order of the Judge, applied: first, in payment of the expenses occasioned by the sale, and such costs as may be ordered to be paid by the Judge; secondly, in payment of the moneys which are then due or owing to the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances, if any, in the order of their priority; and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be; and thereupon such sale shall be confirmed by the Judge.

76. Upon the registration of any transfer executed by a mortgagee or encumbrancee, pursuant to such sale as aforesaid, the estate or interest of the mortgagor or encumbrancer at the time of making such mortgage or encumbrance shall pass to and vest in the purchaser, freed and discharged from all liability, on account of the mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto, and the purchaser shall be entitled to registration as an ordinary transferee.

79. Upon the production of any mortgage or encumbrance having endorsed thereon or attached thereto a receipt or acknowledgment in the form "I" in the schedule to this Act, signed by the mortgagee or encumbrancee, and proved by the affidavit of an attest-

ing witness, discharging the whole or any part of the land comprised in such instrument from the whole or any part of the principal sum or annuity secured thereby, or upon proof being made, to the satisfaction of a Judge, of the payment of all or part of the moneys due on any mortgage or encumbrance, and the production to the registrar of a certificate signed by the Judge to that effect, the registrar shall thereupon make an entry on the certificate of title noting that such mortgage or encumbrance is discharged, wholly or partially, or that part of the land is discharged, as aforesaid, as the case requires, and upon such entry being so made, the land, or the estate or interest in the land or the portion of the land mentioned or referred to in such endorsement, as aforesaid, shall cease to be subject to or liable for such principal sum or annuity, or, as the case may be, for the part thereof mentioned in such entry as discharged.

82. Mortgages, encumbrances and leases of land, for which a certificate of title has been granted, may be transferred by a transfer executed in the form "P" in the schedule to this Act, and the transfer shall be registered in the same manner as mortgages, encumbrances and leases are registered; and transferees shall have priority according to the time of registration.

2. Any mortgagee may transfer a part of the sum secured by the mortgage by a transfer executed in the form "Q" in the schedule to this Act, and the part so transferred shall continue to be secured by the mortgage, and may be given priority over the remaining part, or may be deferred or may continue to rank equally with it under the security of the original mortgage, as stated in the transfer; and the registrar shall enter on the certificate of title a memorandum of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank, and shall notify the mortgagor of the facts.

83. Upon the registration of a transfer of any mortgage, encumbrance or lease, the estate or interest of the transferrer, as set forth in such instrument, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee, and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such instrument.

84. By virtue of every such transfer the right to sue upon any mortgage or other instrument, and to recover any debt, sum of money,

annuity or damage thereunder, and all interest at the time of such transfer in any such debt, sum of money, annuity or damages, shall be transferred so as to vest the same in law in the transferee thereof; provided always that nothing herein contained shall prevent the Court from giving effect to any trusts affecting the said debt, sum of money, annuity or damages, in case the said transferee shall hold the same as trustee for any other person.

85. In every mortgage there shall be implied against the mortgagor remaining in possession, a covenant that he will repair and keep in repair all buildings or other improvements erected and made upon the land, and that the mortgagee may at all convenient times until the mortgage is redeemed, be at liberty, with or without surveyors or others, to enter into or upon the land to view and inspect the state of repair of the buildings or improvements.

86. Whenever, in a mortgage made under this Act, the forms of words in column one of the form "R" in the said schedule to this Act, and distinguished by any number therein, are used, such mortgage shall be taken to have the same effect, and be construed as if there had been inserted therein the form of words contained in column two of the said form and distinguished by the same number; and every such form shall be deemed a covenant by the covenantor with the covenantee and his transferees, binding the former and his heirs, executors, administrators and transferees; but it shall not be necessary in any such mortgage to insert any such number; and there may be introduced into or annexed to any of the forms in the first column any expressed exceptions from the same or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

87. This section was repealed by 60-61 Vict. (1897), c. 30 (assented to 29th June, 1897), and the following section substituted therefor:

"The owner of any land may authorize and appoint any person to act for him or on his behalf with respect to the transfer or other dealing with such land or with any part thereof, in accordance with the provisions of this Act, by executing a power of attorney in the form "S" in the schedule to this Act, or as near thereto as circumstances permit, or in any form heretofore in use for the like purpose in which the land is not specifically mentioned and described, but is mentioned and referred to in general terms,

any of which forms of power of attorney the registrar shall register; and if the land referred to in any form of power of attorney is specifically and properly described, the registrar shall make a memorandum upon the certificate of title and upon the duplicate certificate of the particulars therein contained and of the time of its registration; and until such power of attorney is revoked in the manner provided by the next following section, the right of the owner to transfer or to otherwise deal with the land shall be suspended.

2. "The registrar is hereby empowered to recognize, for the purpose for which it was executed, in so far as it concerns any land in his district belonging to the person who executed it, any power of attorney which is in the general form referred to in this section, and which has heretofore been or shall hereafter be deposited, filed or registered in any land titles office in any registration district of the territories; and where an original power of attorney in any form mentioned in this section has heretofore been or shall hereafter be deposited, filed or registered in one land titles office, a copy thereof, certified as such by the registrar in whose office it is of record, may be accepted by any other registrar in lieu of the original, and be recognized by him for the purpose for which the original power of attorney was executed, in so far as it affects any land in the district of the last mentioned registrar belonging to the person who executed it.

3. "The registrar shall keep a book in convenient form in which shall be entered according to the respective dates of the receipt thereof in his office, a record of all powers of attorney or duly certified copies of powers of attorney, deposited, filed, or received in his office; and such book shall be kept in alphabetical order, so as to show the names of all persons whose lands are or are intended to be affected by such powers, and the day, hour and minute of their receipt by him."

88. Any such power of attorney may be revoked by a revocation in the form "T" in the schedule to this Act; and the registrar shall not give effect to any transfer or other instrument, signed pursuant to such power of attorney after the registration of a revocation of such power, unless under any registration abstract outstanding at the time.

CAVEATS.

99. Any person claiming to be interested under any settlement, or trustee, or any instrument of transfer or transmission, or under any unregistered instrument, or under an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially, but the title to which is registered in the name of some other person, or otherwise howsoever in any land, may lodge a caveat with the registrar to the effect that no disposition of, or certificate of title to, such land be made, either absolutely, or in such manner and to such extent only as in such caveat is expressed, or until notice has been served on the caveator, or unless the instrument of disposition or certificate of title be expressed to be subject to the claim of the caveator as claimed in the caveat, or to any lawful conditions expressed therein or (in case the title has not been registered under this Act) that the title of any person other than the caveator be not registered.

2. A caveat shall be in the form "V" in the schedule to this Act, and shall be verified by the oath of the caveator or his agent, and shall contain an address within the registration district at which notices may be served.

3. Upon the receipt of a caveat, the registrar shall enter the same in the day book, and shall make a memorandum thereof upon a certificate of title of the land affected by such caveat, and shall forthwith send a notice of the caveat through the post office or otherwise to the person against whose title the caveat has been lodged; but in the case of a caveat before registration of a title under this Act, the registrar shall, on receipt thereof, enter the same in the day book.

4. So long as any caveat remains in force the registrar shall not enter in the register any memorandum of any transfer or other instrument purporting to transfer, encumber or otherwise deal with or affect the land in respect to which such caveat is lodged, except subject to the claim of the caveator.

5. The owner or other person claiming the land may, by summons, call upon the caveator to attend before a Judge to show cause why the caveat should not be withdrawn, and the said Judge may, upon proof that such last mentioned person has been summoned, and upon such evidence as the Judge requires, make such order in the premises, either *ex parte* or otherwise, as to the said Judge seems fit.

6. Such caveat shall lapse unless, before the expiration of three months from the receipt thereof by the registrar, proper proceedings in a Court of competent jurisdiction have been taken to establish the caveator's title to the estate or interest specified in the caveat, and an injunction or order has been granted restraining the registrar from granting a certificate of title or otherwise dealing with the land.

7. The caveator may, by notice in writing to the registrar, withdraw his caveat at any time; but notwithstanding such withdrawal the Court or Judge may order the payment by the caveator of the costs of the caveatee incurred prior to such withdrawal.

8. A memorandum shall be made by the registrar, upon the certificate of title, and upon the duplicate certificate of the withdrawal, of any caveat or of any order made by the Court or a Judge in connection therewith; and, after such withdrawal, lapse or removal, it shall not be lawful for the same person or for any one on his behalf to lodge a further caveat in relation to the same matter, unless by leave of the Judge.

9. Any person lodging or continuing any caveat wrongfully and without reasonable cause, shall be liable to make compensation to any person who has sustained damage thereby, and such compensation, with costs, may be recovered by proceedings at law if the caveator has withdrawn such caveat, and no proceedings have been taken by the caveatee as herein provided; but if proceedings have been taken by the caveatee, then the compensation and costs shall be determined by the Court or Judge acting in the same proceedings.

10. The Judge, on application for that purpose, on behalf of any person who is under the disability of infancy, lunacy, unsoundness of mind, or absence from the territories may, by order directed to the registrar, prohibit the transfer of or dealing with any land belonging to any such person, and the dealing with any land in any case in which it appears to him that an error has been made by misdescription of such land or otherwise in any certificate of title or other instrument, or for the prevention of any other improper dealing.

ATTESTATION OF INSTRUMENTS.

100. Every instrument executed within the limits of the Territories, other than instruments under the seal of any corporation, caveats, orders of a Court or Judge, executions or certificates of any judicial proceedings, attested as such, requiring to be registered under

this Act, shall be witnessed by one person, who shall sign his name to the instrument as a witness, and who shall appear before the inspector of the land titles office or the registrar or deputy registrar of the registration district in which the land is situated, or before a Judge, stipendiary magistrate, notary public, commissioner for taking affidavits or a justice of the peace, in or for the Territories, and make an affidavit in the form "W" in the schedule to this Act.

101. Every instrument, executed without the limits of the Territories, other than grants from the Crown, orders in Council, instruments under the seal of any corporation, or caveats required to be registered under the provisions of this Act, shall be witnessed by one person, who shall sign his name to the instrument as a witness, and who shall appear before one of the following persons, and make an affidavit in the said form "W":

(a) If made in any Province of Canada, before a Judge of any Court of Record, any commissioner authorized to take affidavits in such Province for use in any Court of Record in the Territories or before any notary public under his official seal; or,

(b) If made in Great Britain or Ireland, before a Judge of the Supreme Court of Judicature in England or Ireland, or of the Court of Sessions or the Judiciary Court in Scotland, or a Judge of any of the County Courts within his county, or the mayor of any city or incorporated town under the common seal of such city or town, or before any commissioner in Great Britain or Ireland authorized to take affidavits therein, for use in any Court of Record in the Territories, or a notary public under his official seal; or,

(c) If made in any British colony or possession out of Canada, before a Judge of any Court of Record, the mayor of any city or incorporated town under the common seal of such city or town, or notary public under his official seal, or (d) if made in any foreign country, before the mayor of any city or incorporated town, under the common seal of any such city or town, or before the British consul, vice-consul or consular agent residing therein, or before any Judge of any Court of Record, or a notary public under his official seal.

103. After a certificate of title has been granted therefor any person deprived of any land, in consequence of fraud, or by the registration of any other person as owner of such land, or in consequence of any fraud, error, omission or misdescription in any certificate of title or in any memorandum thereon, or upon the duplicate thereof, may, in any case in which the land has been included in two or more

grants from the Crown, bring and prosecute an action at law for the recovery of damages against such person as a Judge appoints, and in any other case against the person upon whose application the erroneous registration was made, or who acquired title to the land in question through such fraud, error, omission or misdescription; provided always, that except in the case of fraud or error occasioned by any omission, misrepresentation, or misdescription in the application of such person to be registered as owner of such land, or in any instrument executed by him, such person shall, upon the transfer of such land *bona fide* for value, cease to be liable for the payment of any damages which but for the transfer, might have been recovered from him under the provisions hereinbefore contained, and such damages, with costs, may, in such last mentioned case, be recovered out of the insurance fund hereinafter provided for, by action against the registrar as nominal defendant.

104. Nothing in this Act contained shall be so interpreted as to leave subject to action for recovery of damages, as aforesaid, or to action of ejectment, or to deprivation of land in respect to which he is registered as owner, any purchaser or mortgagee *bona fide* for valuable consideration of land under this Act, on the plea that his transferror or mortgagor has been registered as owner through fraud or error, or has derived from or through a person registered as owner through fraud or error, except in the case of misdescription, as mentioned in section 102.

"AN ACT TO ENCOURAGE SILVER-LEAD SMELTING" (58 VIC. D.C.)

In 1895 an Act entitled "An Act to encourage Silver-lead Smelting" (assented to 22nd July, 1895), was passed authorizing the Governor in Council, subject to certain provisions, to pay a bounty not exceeding fifty cents per ton and not exceeding in all \$150,000 "on Canadian silver-lead ore and other ores of silver and gold smelted in Canada between the first days of July, 1895, and 1900," but (by section 4) not "on any ores smelted in smelting works which are not established and in operation before the first day of January, 1897."

BOUNDARIES OF ONTARIO.

By "The Canada (Ontario Boundary) Act," Imp. Stat. 52 & 53 Vict. c. 28 (assented to 12th August, 1889), the following are declared to be the westerly, northerly, and easterly boundaries of the Province of Ontario, that is to say:

"Commencing at a point where the international boundary between the United States of America and Canada strikes the western shore of Lake Superior, thence westerly along the said boundary to the north-west angle of the Lake of the Woods, thence along a line drawn due north, until it strikes the middle line of the course of the river discharging the waters of the lake called Lake Seul, or the Lonely Lake, whether above or below its confluence with the stream flowing from the Lake of the Woods towards Lake Winnipeg, and thence proceeding eastward from the point at which the before-mentioned line strikes the middle line of the course of the river last aforesaid, along the middle line of the course of the same river (whether called by the name of the English River, or, as to the part below the confluence, by the name of the River Winnipeg), up to Lake Seul, or the Lonely Lake, and thence along the middle line of Lake Seul, or Lonely Lake, to the head of that lake, and thence by a straight line to the nearest point of the middle line of the waters of Lake St. Joseph, and thence along that middle line until it reaches the foot or outlet of that lake, and thence along the middle line of the river by which the waters of Lake St. Joseph discharge themselves to the shore of the part of Hudson's Bay, commonly known as James' Bay, and thence south-easterly following upon the said shore to a point where a line drawn due north from the head of Lake Temiscamingue would strike it, and thence due south along the said line to the head of the said lake, and thence through the middle channel of the said lake into the Ottawa River, and thence descending along the middle of the main channel of the said river to the intersection by the prolongation of the western limits of the Seigneurie of Rigaud, such main channel being as indicated on a map of the Ottawa Ship Canal Survey, made by Walter Shanly, C.E., and approved of by an order of the Governor-General in Council, dated the twenty-first July, one thousand eight hundred and eighty-six; and thence southerly following the said westerly boundary of the Seigneurie of Rigaud to the south-west angle of the said seigneurie, and then southerly along the western boundary of the augmentation of the township of Newton to the north-west angle of the Seigneurie of Longueuil, and thence south-easterly along the south-western boundary of the said Seigneurie of New Longueuil to a stone boundary on the north bank of the Lake St. Francis, at the cove west of Point au Baudet, such line from the Ottawa River to Lake St. Francis being as indicated on a plan of the line of boundary between Upper and Lower Canada, made in accordance with the Act 23 Vict. c. 21, and approved by order of the Governor-General in Council, dated the 16th of March, 1861.

MICHIPICOTON MINING DIVISION.

Copy of an Order in Council approved by His Honor the Lieutenant-Governor, the 9th day of September, A.D. 1897.

Upon consideration of the annexed memorandum of the Director of the Bureau of Mines, dated 8th September, 1897, not printed, and upon the recommendation of the Honorable the Commissioner of Crown Lands, the Committee of Council advise that the tract first mentioned in the said memorandum, namely, the tract limited upon its east side by the meridian of the east end of Dog Lake, or say eighty-four degrees west from Greenwich, on the south side by the latitude of Cape Gargantua, say forty-seven degrees, thirty-six minutes, on the north side by the latitude of forty-eight degrees thirty minutes, and between the westerly ends of these lines of latitude, where they touch Lake Superior, by the shore line of said lake, containing about five thousand square miles, be so declared a mining division, and that the name thereof be the "Michipicoton Mining Division."

REGULATIONS FOR MINING DIVISIONS.

Copy of an Order in Council approved by His Honor the Lieutenant-Governor the 29th day of January, A.D. 1898.

Upon the recommendation of the Honorable the Commissioner of Crown Lands, the Committee of Council advise that the accompanying draft regulations for mining divisions, revised and amended in accordance with the provisions of chapter 11, 61 Victoria, being an Act respecting Mining Claims, be approved of by your Honor.

REVISED AND AMENDED REGULATIONS FOR MINING DIVISIONS.

Approved by the Lieutenant-Governor in Council, January 29, 1898

1. Any person may explore for minerals on any Crown lands not for the time being marked or staked out and occupied, except on such lands as by the Lieutenant-Governor in Council may have been withdrawn from sale, location or exploration as being valuable for their pine timber or for any other reason.

2. Where Crown lands are situated within a Mining Division they may be occupied as mining claims under miners' licenses.

3. The Lieutenant-Governor may appoint for every mining division or for any part thereof an inspector, who shall be an officer of the Bureau of Mines.

4. Every inspector shall have power to enter, inspect and examine any mine or portion thereof or works connected therewith relating to the health and safety of the persons employed in or about the mine or works, and to give notice to the owner or agent in writing of any particulars in which he considers such mine or works, or any portion thereof, or any matter, thing or practice, to be dangerous or defective, and to require the same to be remedied within the period of time named in such notice; and on the occasion of any examination or inspection of a mine the owner shall produce to the inspector, if required so to do, an accurate plan of the workings thereof up to the time of such inspection, and shall also permit the inspector to take a copy or tracing thereof.

5. Every inspector shall be *ex officio* a justice of the peace of the county or united counties, district or districts which a mining division comprehends or includes, in whole or in part, or in which or in any portion of which a mining division lies.

6. Every inspector shall have power, within the mining division for which he has been appointed, to settle summarily all disputes between licensees as to the existence or forfeiture of mining claims, and the extent and boundary thereof, and as to the use of water and access thereto, and generally to settle all difficulties, matters or questions which may arise between licensees; and the decision of the inspector in all such cases shall be final, except where otherwise provided by the Mines Act, or where another tribunal is appointed under authority of the Act; and no case under the Act shall be removed into any Court by *certiorari*.

7. Every inspector of a mining division appointed under the Mines Act may appoint any number of constables not exceeding four; and the persons so appointed shall be constituted constables and peace officers for the purposes of the Act for and during the terms and within the mining divisions for which they are appointed.

8. No person shall be appointed or authorized to act as an inspector who practices, or acts, or is a partner of any person who acts as a mining agent, or who is employed by the owners of or is interested in any mine.

9. The Director of the Bureau of Mines shall have all the powers, rights and authority throughout the Province which an inspector has or may exercise in any mining division, and such other powers, rights and authority for the carrying out of the provisions of the Mines Act as shall be assigned to him by regulation.

10. No Director, inspector or other officer appointed under the Mines Act shall directly or indirectly purchase or become interested in any Crown lands or mining claim; and any such purchase or interest shall be void; and if any officer violates this regulation he shall forfeit his office and be liable in addition to a penalty of \$500 for every such offence, to be recovered in an action by any person who sues for the same.

11. The Lieutenant-Governor in Council may by Order declare any tract of country therein described to be a mining division; and by any subsequent Order in Council may add to or diminish the limits of the division, or may otherwise amend any such Order, or may cancel the same.

12. On payment of a fee of \$10, or such other sum as may be fixed by regulation, the Director of the Bureau of Mines (or the inspector of a division when so authorized by the Commissioner of Crown Lands) may grant to any person, registered partnership, or mining company incorporated under the laws of the Province applying therefor a license to be called a "miner's license," which shall be in force for one year from the date thereof, and shall not be transferable except with the consent of the Director of the Bureau or the inspector of the division.

13. The person, partnership or company named in a license shall be called the "licensee," and upon payment of the fee fixed by law or regulation, and production of proof under oath that the mining conditions have been duly performed upon the claim or claims staked out and held, such licensee shall have the right to renewal if application is made therefor before the expiration of the license or within ten days thereafter.

14. Every licensee shall produce and exhibit his license to the inspector for the division, and prove to the satisfaction of the inspector that it is in force, at the time of recording his claim, and at any other time when required by the inspector so to do.

15. A miner's license shall authorize the licensee to explore any portion of the mining division named in his license, and to mine dur-

ing one year from the date of the license on any mining claim marked or staked out by such licensee on Crown lands, and he may employ any person to assist him in working such claim, or may organize a company to work the same, and in either case the working conditions shall be deemed to be complied with when the equivalent of one man's labor for the year in actual mining has been performed as hereinafter required; but no licensee shall have the right to cut down or use any timber which may be upon his claim except for purposes of building, fencing or fuel, or other purposes necessary for working the mine upon the said claim.

16. A licensee who discovers a vein, lode or other deposit of ore or mineral in place within the division mentioned in his license shall have the right to mark or stake out thereon a mining claim, providing that it is not included in a claim occupied by another licensee, or is not on Crown lands withdrawn from location or exploration, or on lands the minerals and mining rights whereof have been reserved by the Crown; and he shall have the right to work the same, or he may transfer his interest therein to another licensee upon payment of a fee of \$5 to the inspector of the division, who shall record the transfer in his book.

17. If the working conditions have been complied with as hereinafter required for a period of three years on a claim of twenty chains square, or for two years on a claim of fifteen chains square or less, or when the equivalent of such working conditions has been complied with in a less period of time in the respective cases, the licensee may apply for and obtain a patent or lease for the land embraced in the claim, free from any further working conditions, upon a survey thereof being made and filed according to section 27 of "The Mines Act," R. S. O. 1897, and upon payment therefor to the Department of Crown Lands of the purchase price or first year's rental at a rate per acre as provided in sections 31 and 35 respectively of the said Act; and the time when the royalties may begin to be imposed or collected upon ores or minerals mined, wrought or taken from a claim so patented or leased shall be reckoned from the date of recording such claim in the inspector's office.

18. A mining claim shall be marked or staked out by planting a discovery post of wood or iron (on which is written or stamped the name of the licensee, number of his license, and date of his discovery) upon an outcropping or show of ore or mineral in place within the boundaries of the claim, and by planting at each of the four corners a post of wood or iron in the order following, viz.: No. I. at the

north-east corner; No. II. at the south-east corner; No. III. at the south-west corner, and No. IV. at the north-west corner, the number in each case to be on the side of the post towards the post which follows it in the order in which they are named. See fig. 1.

19. If one or more corners of a claim fall in any situation where the nature or shape of the ground renders the planting of a post or posts impracticable, such corner or corners may be indicated by placing at the nearest suitable point a witness post, which in that case shall contain the same marks as those prescribed for corner posts,

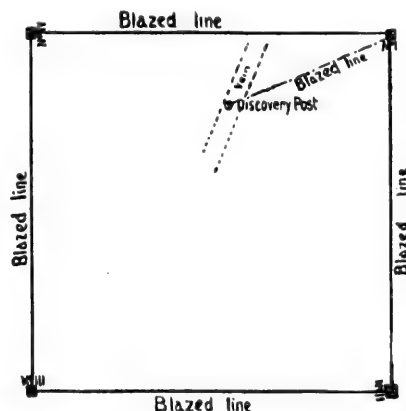


Fig No 1.

together with the letters "W. P." (witness post) and an indication of the bearing and distance of the site of the true corner from such witness post. See fig. 2.

20. Where there are standing trees upon a mining claim so staked out, the licensee shall be required to blaze the trees and cut the underbrush along the boundary lines of the claim, and also along a line from the first corner post to the discovery post.

21. A mining claim shall be a square of fifteen chains or 990 feet, horizontal measurement, containing twenty-two and one-half acres, or of such other extent, greater or less, but so as not to exceed

a square of twenty chains or 1,320 feet, containing forty acres, and shall be laid out with boundary lines running north and south and east and west astronomically, and the ground included in each claim shall be deemed to be bounded under the surface by lines vertical to the horizon; but an irregular portion of land lying between two or more claims may be staked out with boundaries conterminous thereto, provided that its area shall not exceed forty acres. A valuable water-power lying within the limits of a claim shall not be deemed as part of it for the uses of the licensee.

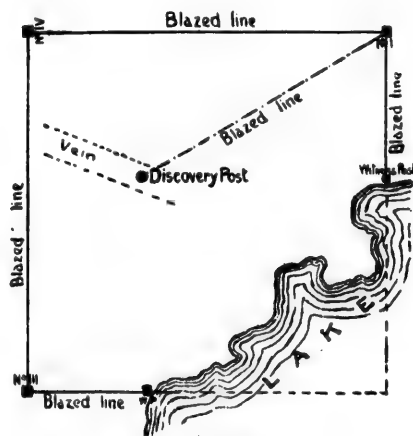


Fig No 2.

22. No more than one claim shall be staked out by any individual licensee upon the same vein, lode or deposit of ore or mineral, unless such claim is distant at least sixty chains from the nearest known mine, claim or discovery on the same vein, lode or deposit, but no licensee shall stake out and record in the same mining division, within a radius of fifteen miles, more than four claims in one calendar year.

23. For each additional mining claim after the first marked or staked out by a licensee, whether upon the same vein, lode or deposit, or upon another, he shall pay to the inspector of the division a fee of \$10 a year in advance when recording the same if the area is more

than twenty-two and one-half acres, and \$6 if it is twenty-two and one-half acres or less, and a like fee in each case shall be paid for every additional claim so held at the time of renewal of the license.

24. Every inspector of a mining division shall keep a book for the recording of mining claims therein, and such book shall be open to inspection by any person on payment of a fee of twenty cents.

25. Every licensee who has marked or staked out a mining claim shall, within thirty days thereafter, supply under oath to the inspector of the division an outline sketch or plan thereof, showing the discovery post and corner posts, and the witness posts (if any) and their distances from each other in feet, together with a notice in writing setting forth under oath the name of the licensee and the number of his license, the name (if any) of the claim and its locality as indicated by some general description or statement, the length of the boundary lines if for any cause they are not regular and the nature of such cause, the situation of the discovery post as indicated by distance and direction from the first corner post, the time when discovery of ore or mineral was made and when the claim was marked or staked out and the date of the said notice; and every licensee shall accompany his sketch or plan and notice with an affidavit showing the discovery of valuable ore or mineral upon the claim by or on behalf of such licensee, and that he has no knowledge and has never heard of any adverse claim by reason of prior discovery or otherwise.

26. The inspector shall forthwith enter in his book the particulars of the notice of claim presented by every licensee, and shall file the notice, sketch or plan and affidavit with the records of his office, and if there is no dispute as to the rights of the licensee to the claim by reason of prior discovery or otherwise, the inspector may at the expiration of ninety days from the date of the record thereof grant to the licensee a certificate of such record.

27. If the licensee fails to comply with the provisions of regulation 25 so far as they relate to him, or if, having complied with them, he or any person in his behalf shall remove any post for the purpose of changing the boundaries after the plan and notice have been filed, the mining claim marked or staked out by him shall be deemed to be forfeited and abandoned, and all right of the licensee therein shall cease.

28. A mining claim shall also be deemed to be forfeited and abandoned and all right of the licensee therein shall cease in case the

miner's license has run out and has not been renewed, or if the annual fee for a claim has not been prepaid, or if actual mining operations shall not be carried on upon each claim taken up except as provided in regulation 29 for at least five months of one man's time, or an equivalent if more than one man is employed on the same claim, in every calendar year.

29. For every four claims or less held by the same licensee or by different persons agreeing to combine their mining operations within a radius of one mile, all such mining operations may be carried on upon one of the claims; but notice of an intention to carry on such operations must be filed with the inspector, and a record of all mining operations carried on by a licensee during his license year verified by oath shall be filed with the inspector, who shall enter an abstract thereof in his book.

30. A licensee may at any time abandon a mining claim by giving notice in writing to the Inspector of the Mining Division of his intention so to do, and from the date of the record of such notice in the inspector's book all interest of the licensee in such claim shall cease.

31. A party wall at least fifteen feet thick (seven and one-half feet on each side of the boundary lines) shall be left between adjoining claims on Crown lands, which shall be used in common by all parties as a roadway for all purposes, and shall not be obstructed by any person throwing soil, stone or other material thereon; and if it is found necessary or expedient to remove such party wall the person so removing it shall if required construct a new roadway in no wise more difficult of approach than the one destroyed by the removal of the party wall; and every person obstructing a party wall or failing to construct a new roadway in place of the one destroyed shall be liable to a fine of not more than \$5 and costs, or in default to be imprisoned for any period not exceeding one month.

32. No person mining upon Crown lands shall cause damage or injury to the holder of another claim, by throwing earth, clay, stones or other material thereon, or by causing or allowing water to flow into or upon such other claim from his own, under a penalty of not more than \$5 and costs, and in default of payment he may be imprisoned for any period not more than one month.

33. Any person who removes or disturbs with intent to remove any stake, picket or other mark placed under the provisions of the

Mines Act shall forfeit and pay a sum not exceeding \$20 and costs; and in default of payment may be imprisoned for any period not exceeding one month.

34. Any person contravening Part III. of the Mines Act or any rule or regulation made under it, in any case where no other penalty or punishment is imposed, shall for every day on which such contravention occurs, or continues, or is repeated, incur a fine of not more than \$20 and costs; and in default of payment may be imprisoned for a period not exceeding one month.

35. Every person who pulls down, injures or defaces any rules, notice or abstract posted up by the owner or agent of a mine shall be guilty of an offence against the Mines Act.

36. Every person who wilfully obstructs an inspector in the execution of his duty under the Mines Act, and every owner or agent of a mine who refuses or neglects to furnish to the inspector the means necessary for making an entry, inspection, examination or enquiry under the Mines Act in relation to such mine shall be deemed to be guilty of an offence against the Act.

37. Every inspector of a Mining Division may convict upon view of any of the offences punishable under the provisions of Part III. of the Mines Act or any regulations made thereunder.

38. The Lieutenant-Governor in Council may, as often as occasion requires, declare by proclamation that he deems it necessary that the Act respecting Riots near Public Works (R. S. O. 1897, c. 38,) shall, so far as the provisions therein are applicable, be in force within any Mining Division; and upon and after the day to be named in any such proclamation section 1 and sections 3 to 11 inclusive of the said Act, so far as the provisions thereof can be applied therein, shall take effect within the Mining Division designated in the proclamation; and the provisions of the said Act shall apply to all persons employed in any mines, or in mining within the limits of such division, as fully and effectually to all intents and purposes as if the persons so employed had been specially mentioned and referred to in the said Act.

39. All the provisions of Part IV. of the Mines Act, R. S. O. 1897, being the part under the heading of Mining Regulations, shall apply in every particular to all mines and other openings from which ore or mineral of any kind or class is raised or taken, and to all works

for smelting, milling or otherwise treating ores or mineral for any economic object, which are situated within the limits of a Mining Division.

EXTRACTS FROM THE MINING LAWS.

Section 15 of an Act relating to Mines and Mining Lands (57 Vict. c. 16):

15. The Commissioner of Crown Lands may, out of the moneys voted for that purpose, purchase not more than two diamond drills to be used in exploratory drilling of ores or minerals in the Province, under rules and regulations to be made by the Lieutenant-Governor in Council.

The Regulations shall, amongst other things, provide :

(1) For the control and working of the drills under the direction of a person or persons employed for the purpose by the Bureau of Mines.

(2) As to the payment of freight charges where the drills are used upon mines or lands other than those owned by the Crown;

(3) As to the application for the use of the drills and the method of dealing therewith;

(4) As to the charges for the use of the drills and for damages thereto, or wear or tear connected therewith, and otherwise as to the Lieutenant-Governor in Council shall seem meet.

RULES AND REGULATIONS FOR THE CONTROL AND WORKING OF
DIAMOND DRILLS.

Approved by His Honour the Lieutenant-Governor, September 15, 1894, and April 9, 1896.

1. The Bureau of Mines may employ diamond drills to explore public and private lands in the Province for ores or minerals subject to the following rules and regulations, made under authority of "The Mines Act, 1892," and the amending Act of 1894.

2. The Commissioner of Crown Lands may request a skilled and competent person to examine any locality or territory of the

public lands of the Province, and upon receiving a report of a reasonable prospect of ores or minerals being found thereon he may require an exploration of the lands to be made with a diamond drill, and may deal with them as provided in the third clause of section 12 of "The Mines Act, 1892."

3. The Commissioner of Crown Lands may grant the use of a drill to explore mines or mineral lands in the Province owned or leased by any corporation, company, syndicate, firm, person or persons when application is made therefor in writing to the Director of the Bureau of Mines, subject to the following terms and conditions, viz. :—

The applicant or applicants to give a bond in the form of Schedule A hereunder, or to the like effect, with sufficient sureties, or other security to the satisfaction of the Commissioner, for payment to the Treasurer of the Province at Toronto of costs and charges for—

(1) Carrying the drill and all necessary plant to the mine or location and setting the same in place for running under proper cover;

(2) Working the drill, including superintendence and labour, fuel and water;

(3) Loss or breakage of bits, core lifters and core shells;

(4) Wear or loss of diamonds, to be ascertained by weight and computed at an advance of ten per cent. upon cost price, to cover unusable fragments;

(5) Other repairs of breakages and wear and tear of machinery, such sum per month as shall be estimated and certified by the mechanical manager, subject to appeal to the Director of the Bureau of Mines;

(6) Together with an additional charge of fifty dollars per month for use of the drill from the date of report to the Commissioner that the mine or land has been shown through the use of the drill to be a valuable mineral property, where work is continued thereafter.

All such costs and charges firstly above mentioned to be paid within one month from the date of putting the drill in place ready for operation, and all other costs and charges at the end of each and every month thereafter during the continuance of the work.

But to encourage the exploration of mines and mineral lands and to demonstrate the utility of diamond drills in such work, it is provided that fifty per cent. of the aggregate of costs and charges above enumerated (except as to the charge mentioned above in number 6), shall be borne by the Bureau of Mines in 1894 and 1895, forty-five per cent. thereof in 1896 and 1897, and thirty-five per cent. thereof each year thereafter until the end of the year 1900. Nevertheless, no part of such costs and charges shall be borne or assumed by the Bureau of Mines after a report has been made to the Commissioner by the Director and Geologist and Mineralogist of the Bureau, based upon examination of the cores of the drill, and other satisfactory evidence, showing that the mine or mineral land under exploration has been proven by the use of the drill to be a valuable mineral property.

4. Applications for use of drills will be dealt with in the order of the date of receipt; but satisfactory evidence may be required to show that there is a reasonable prospect of valuable ore or mineral being found upon a property before the granting of a drill to explore it is sanctioned by the Commissioner of Crown Lands. The Commissioner may also in writing give precedence to a later application where in the case of an earlier one there is neglect or delay in completing the preliminary arrangements, or (to prevent loss of time and extra cost of transportation) where two or more applications are from the same or a contiguous locality, but in such case he shall state in writing the reasons for giving such precedence. The Lieutenant-Governor in Council may also give precedence to an application to explore a recent and promising discovery of ore or mineral where it appears to be in the public interest that a speedy test should be made, or where substantial exploratory or mining work is being carried on, or for such other special reasons as may appear to best serve and promote the interests of mining in the Province, and in such case the Order in Council shall set forth the reasons for giving such precedence.

5. The Commissioner of Crown Lands may upon the report of the Director of the Bureau of Mines suspend or terminate the working of a drill at any time, and the corporation, company, syndicate, firm, person or persons for whose benefit such drill was being used, shall not have any claim to compensation on account of such suspension or termination.

6. A competent mechanical manager appointed by the Lieutenant-Governor, upon such terms as to a trial and otherwise as may

be deemed desirable, shall have the control and working of each drill, subject to the instructions of the Director of the Bureau of Mines, and shall be responsible for the efficient and economic working of the drill, and for the care and safe keeping of the drill, boiler, pump, equipment and stores. He shall also be required—

(1) To have oversight of the boiler, conduct the running of the drill, set or refit the diamonds when necessary, keep an accurate daily record of the progress of borings, and preserve the cores in boxes supplied for the purpose in such a way as to show a complete and continuous section of the rocks, formations, veins or mineral deposits so explored;

(2) To superintend transportation of the plant and its removal from one site to another, to set it up in a proper manner where borings are required to be made, and to erect a sufficient cover for the drill and boiler so that operations may be carried on in any weather;

(3) To act upon the advice of the person authorized to mark the site and indicate the course of each boring and the depth to which it shall be continued, unless otherwise instructed by the Director of the Bureau of Mines;

(4) To keep an accurate and detailed account of all expenses of transportation, labour, repairs, fuel, supplies, etc., required in connection with the employment of the drill, and to make a report thereof monthly to the Director of the Bureau, and to transmit therewith all bills and vouchers for the same;

(5) To make a weekly report of progress to the Director of the Bureau while in the field, and to report forthwith any stoppage of operations due to accident or other causes;

(6) To make a detailed report to the Director of the Bureau of the operations of each year.

7. The mechanical manager shall not impart or reveal the knowledge or information acquired by him in exploring with the drill, nor exhibit the cores and cuttings of the drill, except to the Director of the Bureau of Mines, or to any person whom the Director may designate in writing, or to an authorized agent or representative of the corporation, company, syndicate, firm, person or persons for whom the property is being explored, and he shall dispose of the cores and cuttings of the drill only as he may be instructed by the Director.

8. The mechanical manager shall give a bond with sufficient sureties or other acceptable security in the sum of not less than one thousand dollars, for the faithful performance of his duties as mechanical manager and for the right care and use of the plant, equipment and stores placed in his charge.

9. The Commissioner of Crown Lands may, when necessary, employ a fireman to assist the mechanical manager in operating each drill at such rate of wages and allowance for expenses as may be agreed upon for the period of his employment in the field, reckoned from the day of going out to the day of returning, and the person so appointed shall, in all matters appertaining to his duties, be subject to the orders of the manager.

REGULATIONS TO GOVERN PAYMENTS OUT OF THE IRON MINING
FUND, CHAPTER 16, SS. 11, 12, 13 AND 14, 57 VICT., CHAPTER
13, s. 6, 59 VICT.

Approved by Order of the Lieutenant-Governor in Council, dated
25th April, 1896.

1. The Commissioner of Crown Lands may appoint a competent person to analyze for their metallic contents all iron ores upon which bounties may be claimed for payment out of the Iron Mining Fund, as provided by sections 11, 12, 13 and 14, chapter 16 of 57 Vict., and section 6, chapter 13 of 59 Vict., and such person shall select for this purpose fair average samples from the ore piles at the mines or from the cars or stockhouse after delivery at a blast furnace in the Province, and shall report thereon for the lots of each miner or producer of ore separately to the Director of the Bureau of Mines, and payments out of the fund may be made by the Treasurer of the Province *pro rata* according to such analyses, based on the total quantity of ore smelted in the furnace and of the pig or metallic iron product thereof.

2. The miner or producer of ore who proposes to make a claim upon the fund shall notify the Director of the Bureau of Mines of his intention so to do at least one week before shipment of ore is made to a blast furnace in the Province, and subsequently when such shipment has been made, in order that samples thereof may be procured, and in filing his claim for payment out of the fund, which

he shall do on or before the first day of December in each year, with a statutory declaration of the correctness thereof, he shall accompany the same with a certified statement (also verified by a statutory declaration of the correctness thereof) from the manager or superintendent of the blast furnace, showing the quantity of ore in tons and pounds furnished by such miner or producer, which has been smelted during the twelve months ending 31st day of October next preceding, and showing also the percentage of metallic iron per ton produced from such ore when practicable.

3. In case ores, the product of mines situate outside of the Province of Ontario, are used with those of Ontario mines, the manager or superintendent of any blast furnace using such ores shall notify the Director of the Bureau of Mines in order that samples may be taken of the various kinds and grades of such other ores for analysis, and shall on or before the first day of December in each year furnish a statement (verified by statutory declaration) of the total quantities of ores smelted in the furnace during the twelve months ending 31st day of October next preceding, distinguishing those of each of the Ontario mines from all others, and also of the pig or metallic iron product of all such ores, and payments out of the fund upon such ores the product of Ontario mines may be made by the Treasurer of the Province to the parties entitled thereto as provided in the first regulation hereof.

4. Or if the owner of the blast furnace has regularly in his employ an analyst, whose duty it is to make analyses of all ores smelted in the furnace, the Commissioner of Crown Lands may at his option agree with the miner or producer of Ontario ores to accept such analyses as the data for estimating the pig or metallic iron product of all ores smelted at the furnace, whereon to compute payments out of the fund to miners or producers of ore as provided in the first regulation hereof; but the commissioner may reserve the right to take samples of all ores for the making of check analyses, if deemed expedient so to do.

5. Every miner or producer shipping ores to a blast furnace and claiming aid out of the Iron Mining Fund, together with every person, firm or company purchasing such ores to whom claims upon the fund by the party earning the same may be assigned, and the managers or superintendents of blast furnaces in the Province at which such ores are delivered and smelted, shall, if the Commissioner of Crown Lands so require, furnish to the satisfaction of the Director

of the Bureau of Mines on or before the first day of December in each year statements under statutory declaration of the quantities of ore so shipped, and so received and smelted respectively, during the twelve months ending 31st day of October next preceding, and shall produce their books and records for examination by any person appointed by the Commissioner of Crown Lands for the purpose of verifying the statements so made to the Director of the Bureau of Mines—in the case of such miners and producers or dealers as to quantities mined or purchased and shipped to a blast furnace, and in the case of managers and superintendents as to (1) quantities from such miners, producers and dealers received and smelted; (2) quantities of ores from all other sources smelted, and (3) the net metallic iron product of all ores so smelted during the year; and the Commissioner of Crown Lands may require such statements to be furnished and such examinations to be made monthly, quarterly or semi-annually, as may seem necessary or convenient for the due administration of the fund; and all payments out of the fund may be made by the Treasurer of the Province upon the certificate of the Director of the Bureau of Mines approved by the Commissioner of Crown Lands. Notwithstanding anything herein contained, the said Commissioner may call for such other and further proof or verification of any statement, account or allegation, or in respect of any matter or thing, as to him shall seem meet and proper.

6. The fees for analyses of iron ores payable to the person appointed by the Commissioner of Crown Lands for such purpose shall be made out of the Iron Mining Fund, and shall be a first charge thereon. Payments out of the fund to miners or producers of ores, or to any person, firm or company purchasing such ores to whom the claims upon the fund by the party earning the same have been assigned, may be made by the Treasurer of the Province at the end of each calendar year, or as soon before or thereafter as the necessary statements and data have been supplied to the Director of the Bureau of Mines for enabling him to certify to the said Treasurer, and the maximum rate and amount thereof shall be as limited by section 13, chapter 16, of 57 Vict.

Correspondence on matters referred to in the foregoing regulations should be addressed to the Director of the Bureau of Mines, Parliament Buildings, Toronto.

CHAPTER 198.

An Act respecting the Construction of Roads by Mining Companies.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The proprietors of any mine in Ontario may construct a gravel or macadamized road or a tramway from their mines to the nearest navigable waters or railway or highway, and may take any land required for right of way and stations at a fair valuation, under the provisions of sections 13 to 20 inclusive, of "The Railway Act of Ontario," in that behalf, headed "Lands and their Valuation," which shall apply to such proprietors; but the said gravel or macadamized road or tramway shall not exceed twenty miles in length.
R. S. O. 1887, c. 163, s. 1.

2. The proprietors of any mine holding lands in fee simple, having a frontage of one mile or upwards on any navigable lake, river or stream, may,

- (1) Construct harbours, wharfs, piers and other erections thereon, at the bank of such lake, stream or river, for the accommodation of all kinds of steamers, vessels and craft;
- (2) Make rules and regulations for the government and management of such wharfs and harbours;
- (3) Impose and levy, according to a tariff to be by them adopted for that purpose, and which may from time to time be altered and amended, reasonable wharfage and harbour dues, and fines for the infraction of such rules and regulations.
R. S. O. 1887, c. 163, s. 2.

3. No such rules, regulations or tariff shall be of any force or effect until sanctioned or approved of by the Lieutenant-Governor, and no fine thereby imposed shall exceed \$20 for any one offence, and such fines shall be recoverable in a summary way before any two justices of the peace, as if imposed by Act of the Legislature.
R. S. O. 1887, c. 163, s. 3.

4. Any mining company, or the proprietors of any mine, may improve and render navigable for the transport of freight to and from the mine, any water-course or water-courses, or may construct

a channel of communication between navigable water-courses, that may be necessary for the full and proper development thereof, for the more advantageous working of the mine, and the conveyance of freight to and from the same. But every mining company, or the proprietors, shall be liable to indemnify all persons who may thereby suffer injury to their property or rights. R. S. O. 1887, c. 163, s. 4.

5. For the purposes aforesaid, the mining company, or proprietors of any mine, may enter into and upon the lands of Her Majesty, or of any person or persons, body corporate or otherwise, for the purposes and subject to the conditions aforesaid, and may survey and take levels of the same or any part thereof, found necessary and proper for the construction of tramways, or for making channels of water communication or improving the navigation of any water-course or water-courses. R. S. O. 1887, c. 163, s. 5.

6. No beach, lot or land covered with water, or other public property, shall be taken under this Act without the consent of the Lieutenant-Governor in Council, and then only upon such terms and conditions as he thinks proper. R. S. O. 1887, c. 163, s. 6.

7. No harbour or river improvement shall be made under this Act, or any property taken therefor, so as to interfere with the navigation of the harbour or river, or until the proposed plan and extent thereof, and of the works therewith connected, have been submitted to and approved by the Lieutenant-Governor in Council; but the plan may afterwards be altered and extended with such consent and approval. R. S. O. 1887, c. 163, s. 7.

R. S. O. 1897, c. 197.

An Act respecting the Incorporation and Regulation of Mining Companies.

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "**The Ontario Mining Companies Incorporation Act.**"

2. The Lieutenant-Governor in Council may, by letters patent under the great seal, grant a charter under the Ontario Companies Act, to any number of persons, not less than five, who shall petition

therefor, constituting such persons, and others who may become shareholders in the company thereby created, a body corporate and politic, for the purpose of carrying on within the Province of Ontario, or any of the counties and districts therein, the business and operations of a mining, milling, reduction and development company, or such business and operations as shall be set forth in the letters patent.

Is derived from 1874, c. 35, s. 3, omitting after "charter" on 2nd line, the words "under The Ontario Companies Act," and omitting all the words after the word "for" on 6th line, and reading therefor, "any purposes or objects to which the legislative authority of the Legislature of Ontario extends, except the construction and working of railways and the business of insurance." This is continued in 1877, R. S. O. c. 150, s. 3, and is also continued in 1887, R. S. O. c. 157, s. 4, adding after the word "insurance" at end of section, the words "other than as provided by section 4 of the Ontario Insurance Act," R. S. O. 1877, c. 150, s. 3, and remains unchanged until enacted in 1897, c. 29, section 2.

3. Every such company shall, if the letters patent permit, have power for its mining, milling, reduction and development operations only:

(a) To prospect for, open, explore, develop, work, improve, maintain, and manage gold, silver, copper, coal, iron and other mines, mineral and other deposits and properties and to dig for, raise, crush, wash, smelt, assay, analyze, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same, or any part thereof, or any interest therein;

(b) To acquire by purchase, lease, concession, license, exchange or other legal title, mines, mining-lands, easements, mineral properties, or any interest therein, minerals and ores and mining claims, options, powers, privileges, water and other rights, patent rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, or any interest therein;

(c) To construct, maintain, alter, make, work and operate on the property of the company, or on property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water-powers, aqueducts, wells, roads, piers, wharves, buildings, shops, stamping-mills and other works and machinery, plant, and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, im-

plements, provisions, chattels and effects required by the company or its workmen or servants;

(d) To build, acquire, own, charter, navigate, and use steam and other vessels;

(e) To take, acquire and hold as the consideration for ores, metals or minerals sold or otherwise disposed of, or for goods supplied, or for work done by contract or otherwise, shares, debentures, bonds or other securities of or in any other company having objects similar to those of a company incorporated under this Act, and to sell or otherwise dispose of the same;

(f) To enter into any arrangement for sharing profits, union of interests, or co-operation with any other person or company, carrying on or about to carry on any business or transaction which may be of benefit to a company incorporated under this Act;

(g) To purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person or company carrying on any part of the business which a company incorporated under this Act is authorized to carry on, or possessed of property suitable for the purposes thereof; and,

(h) To subscribe for and take and hold shares or stock in any company incorporated as provided by section 16 of this Act for the purpose of acquiring, holding, constructing, maintaining, and keeping in repair roads, bridges, improvements in waterways, or other means of communication, and drainage works, and other improvements, upon, through, over or adjacent to, or leading to or from the lands of a company incorporated under this section; Provided, that the consent of the shareholders shall be first obtained by resolution passed at a special general meeting called for that purpose.

(i) To do all such acts, matters and things as shall be incidental or necessary to the due attainment of the above objects, or any of them.

SPECIAL PROVISIONS RESPECTING MINING COMPANIES

4.—(1) Notwithstanding anything to the contrary in the Ontario Companies Act contained, the letters patent incorporating a mining company under this Act may, if the petition of the applicants so requires, contain a provision that no liability in excess of the amount actually paid, or agreed to be paid, to the company for shares therein shall attach to any holder of such shares, provided, however,

that no such shares shall be issued at a discount, or any rate other than had previously been sanctioned by the company, unless expressly authorized by a by-law of the company fixing and declaring the rate of discount and any other, if any, terms and conditions of issue; and further provided that a copy of such by-law shall, within twenty-four hours after the by-law was sanctioned, be by registered letter transmitted to the Provincial Secretary, and that such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time out of this Province, or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit, the reason thereof shall be stated in the substituted affidavit; and any company which refuses or fails to comply with the provision of this section, relative to the transmission of a copy of the by-law to the Provincial Secretary, shall incur a penalty of \$20 for every day during which the default continues. 57 Vict. c. 16, s. 18.

No personal liability, etc., is derived from 1894, c. 16, s. 18, in the following abbreviated form: "Where application is hereafter made to the Lieut.-Governor in Council for the incorporation by letters patent under the Ont. J. S. Companies L. P. Act, of any Company for mining purposes, such letters patent, may, if the petition of the applicants so requires, contain a provision that no liability beyond the amount actually paid upon stock in such company, by the subscribers thereto or holders thereof, shall attach to such subscriber or holder," and is first enacted in its present form in 1897, c. 29, s. 4 (1).

(2) Where letters patent incorporating any such company have been granted with the provisions mentioned in this section, every stock certificate issued by the company shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words, "Incorporated under The Ontario Mining Companies Incorporation Act," and where such stock certificates are issued in respect of shares subject to call, the words "Subject to Call"; or if in respect of shares not subject to call, the words "Not Subject to Call," as the fact shall be. 57 Vict. c. 16, s. 19.

1894, c. 16, s. 19, read after "been" on 2nd line, and before issued" on 3rd line, the words "issued containing the provision mentioned in section 18 of this Act, every certificate of stock"; and omit all words after "under" at end of 5th line, and read "section 18 of an Act relating to Mines and Mining Lands," "and where such stock is issued subject to further assessments the word 'assessable,' or if not subject to further assessments the word 'non-assessable' as the case may be," and is enacted for first time in its present form, 1897, c. 29, s. 4 (2).

(3) Every mining company, the charter of which contains the said provision, shall have written or printed on its charter, prospectus, stock-certificates, bonds, contracts, agreements, notices, advertisements and other official publications, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, and receipts of the company, immediately after or under the name of such company, and shall have engraved upon its seal the words "No Personal Liability"; and every such company which refuses, or knowingly neglects to comply with this provision shall incur a penalty of \$20 for every day during which such name is not so kept written or printed; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. 57 Vict. c. 16, s. 20.

"No personal liability to appear" is derived from 1894 c. 16, s. 20. On 10th line this section reads "non-personal liability," and read "section" for "provision" on 12th line; in all other respects it is the same as 1897, c. 29, s. 4 (3).

(4) In the event of any call or calls on shares in a company so incorporated remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in some newspaper published at the place where the principal office of the company is situated, or in case no newspaper is published thereat, then in a newspaper published in the nearest place to said office, for a period of one month; and said notice shall contain the numbers of the stock-certificate or stock-certificates in respect of such shares and the number of shares, the amount of the assessment due and unpaid and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such shareholder by registered letter mailed to his last known address; and if the holder of such shares shall fail to pay the amount due upon such shares with interest upon the same and cost of advertising before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such assessment, together with interest and cost of advertising; provided that if the price of the shares so sold exceed the amount due with interest and costs thereon, the excess thereof shall be paid to the defaulting shareholder. 57 Vict. c. 16, s. 21.

1874, c. 35, ss. 29, 30, 31 and 32, provides for calling in instalments, and enforcing calls by action, and forfeiting unpaid shares, which may be

disposed of by by-law or otherwise, and while differing in language preserves the chief features of 1894, c. 16, s. 21, which seems to be the origin of the section under review. Insert between "the" and "holder" on 2nd line "subscriber thereto or"; read "stock" for "shares" at beginning of 4th line; read "stock" for "shares" on 5th line; and on 11th and 12th lines read "certificate" and "certificates" only, instead of "stock certificate" and "stock-certificates"; and on 16th line read "stockholder" instead of "shareholder"; and on 17th line read "subscriber or holder of such stock," instead of "holder of such shares"; and on 18th line read "stock" for "shares." Otherwise same as in 1897, c. 29, s. 4 (4).

(5) No shareholder in any company so incorporated shall be personally liable for non-payment of any calls made upon his shares, nor shall such shareholder be personally liable for any debt contracted by the company or for any sum payable by the company. 57 Vict. c. 16, s. 22.

Derived from 1894, c. 16, s. 22; add between "shareholder" and "in," on 1st line, the words "or subscriber for stock"; read "stock" for "shares" beginning of 3rd line; and add between "shares" and "the" on 3rd line, "beyond the forfeiture and sale in the event of non-payment of such calls of the amount, if any, already paid on the stock held or subscribed for"; also inserting "or subscribers" between "shareholder" and "he" on 3rd line; and adding at the end of section the words "beyond the amount, if any, paid by him upon such stock"; and appears for first time in its present form in 1897, c. 29, s. 4, s.-s. 5.

5. Notwithstanding anything to the contrary in The Ontario Companies Act contained, any mining company (whose charter does not contain a provision that no liability beyond the amount actually paid, or agreed to be paid, upon shares in such company by the holder thereof shall attach to such holder) may, for the lawful purposes of the company and no other, from time to time, by by-law, to be expressly sanctioned by the company and to be made for the purpose, dispose of shares in the company at such premium, or at such discount and on such terms and conditions as to the company shall seem to be advantageous and proper; provided, however, that a copy of such by-law shall, within twenty-four hours after the by-law was sanctioned, be by registered letter transmitted to the Provincial Secretary, and that such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are or is, at the proper time out of this Province, or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit, the reason thereof shall be

stated in the substituted affidavit; and any company which refuses or fails to comply with the provision of this section relative to the transmission of a copy of the by-law to the Provincial Secretary, shall incur a penalty of \$20 for every day during which default continues. 57 Vict. c. 16, s. 19.

This section appears to be original, except that it embodies the meaning contained in 1894, c. 16, s. 17, which is an amendment to 1887, R. S. O. c. 157, s. 43.

(2) Every stock-certificate issued in respect of any share sold or disposed of by the company under the provisions of this section shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Operating under The Ontario Mining Companies Incorporation Act," and where such stock-certificates are in respect of shares sold, or disposed of at a discount, the words "Issued by the Company at a discount of per centum," the rate of discount to be mentioned as a part of such words.

This section is original, but reference is made to 1894, c. 16, s. 19.

6. Notwithstanding anything contained in this Act, the directors of the company shall be jointly and severally liable to the labourers, servants and apprentices thereof, for all debts not exceeding one year's wages due for services performed for the company while they are such directors respectively; but no director shall be liable to an action therefor, unless the company has been sued therefor within one year after the debt became due, nor yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors. R. S. O. 1887, c. 157, s. 68.

Liability of directors for wages is derived from 1874, c. 35, s. 52.

1887, c. 157, s. 68.

1894, c. 16, s. 23. "Notwithstanding anything contained in this Act, the provisions of section 68 of the Ontario Joint Stock Companies' Letters Patent Act shall apply to any company incorporated under this Act, and to the directors, labourers, servants and apprentices thereof," and forms 1887, c. 29, s. 6.

7. In addition to the facts to be stated in the returns required of companies incorporated under The Ontario Companies Act, every mining company . . . shall state the number of shares therein

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sold or disposed of by the company under the provisions of this Act, or of any other Act, and the rate at which such shares were sold or disposed of, and shall forthwith furnish such further and other information as shall at any time be required by the Provincial Secretary, or by the Director of Mines, and any company which refuses or fails to comply with the provisions of this section shall, in addition to any other penalty, incur a penalty of \$20 for every day during which default continues.

This section is original, and is in addition to 1874, c. 35, s. 42 and sub-sections; also 1877, R. S. O. c. 150, s. 49, and sub-sections; also 1887, R. S. O. c. 157, s. 57, and sub-sections.

8. No share in a mining company shall be issued, sold, or be in any other manner disposed of at a rate less than par, unless under the authority of a by-law passed by virtue of this Act; and any director, officer or agent of a company who acts in contravention of this section shall, on conviction thereof, be liable to a fine of \$200 and to the costs of conviction, and in default of payment of such fine and costs may be sentenced to imprisonment for a period not exceeding three months.

Selling shares below par seems to be derived from 1874, c. 35, s. 24, part, which provides in general companies that no by-law is valid for sale of stock at greater discount or less premium until the same has been confirmed at a general meeting. This is continued in 1877, R. S. O. c. 150, s. 35; also in 1887, R. S. O. c. 157, s. 43, and appears in its present form for the first time in 1897, c. 29, s. 8.

9. No extra-provincial mining, milling, reduction or development company having its head office elsewhere than within this Province, shall, either directly or indirectly, sell or otherwise dispose of within this Province any of its shares, stock, stock-certificates or other securities by whatsoever name known, unless and until it shall have received from the Lieutenant-Governor in Council a license authorizing it to sell and dispose of its shares and other securities, and any person who in contravention of this section acts for an unlicensed company shall, on conviction thereof, be liable to a fine of \$20 per day for every day while he so acted, and, in case the fine be not paid, shall in the discretion of the Court be imprisoned for a period not exceeding three months.

10. No license shall be issued to an extra-provincial mining, milling, reduction and development company having its head office elsewhere than within this Province until the company shall have

satisfied the Director of the Bureau of Mines that it has been duly incorporated and that it possesses the real estate, property and assets, and that it is carrying on its operations on a scale and in a manner to command the confidence of the public, and for this purpose the Director shall have power to require of the company such sworn documentary and other evidence as he shall deem to be requisite in the premises, and upon a report that he is satisfied that the company is one which may be licensed under this section, and upon the recommendation of the Provincial Secretary, the Lieutenant-Governor in Council may direct the issue of a license upon such terms and conditions as to him shall seem proper, and he may summarily revoke and annul such license for any cause that to him shall appear to be sufficient.

LIABILITY FOR FALSE STATEMENTS.

11. If any person in any return, report, certificate, balance-sheet, or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding six months, with or without hard labour, and on summary conviction to imprisonment not exceeding three months, with or without hard labour, and in either case to a fine of \$100 in lieu of or in addition to such imprisonment as aforesaid; provided that a person charged with an offence under this section may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness.

1874, c. 35, s. 40, provides that no officer shall make false entry in any book, or shall refuse or neglect to make any proper entry therein; penalty, criminally and civilly, liable for loss and damage. This is continued in 1877, R. S. O. c. 150, s. 47, also in 1887, R. S. O. c. 157, s. 55, and appears for the first time in its present form in 1897, c. 29, s. 11.

12. Where a prospectus, [advertisement, or any printed or written document answering the purpose of a prospectus, advertisement] or notice, [published or circulated in Ontario], invites persons to subscribe or apply for shares, debenture stock of a company, or other securities [by whatever name known or mentioned, of any mining, milling, reduction or exploration company whatever], every person who is a director of the company at the time of the issue of the prospectus, [advertisement] or notice, and every person who, having authorized such naming of him, is named in the prospectus, [adver-

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tisement] or notice as a director of the company or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, [advertisement] or notice, shall be liable to pay to all persons so subscribing or applying on the faith of such prospectus or notice, compensation for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved,

Liability for statements in prospectus, etc., is derived from 1891, c. 34, s. 4 (1), which embodies the same in a more abbreviated form, as 1897, c. 29, s. 12.

(a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and up to the time of the allotment or issue of the shares, debenture stock, annuities on lives, or other securities, as the case may be, did believe that the statement was true.

Derived from 1891, c. 34, s. 4 (a), inserting between "stock" and "or" on 5th line, the words "annuities on lives," otherwise identical with 1897, c. 29, s. 12 (a).

(b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named, promoter, or other person, who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it, and

Liability, etc. Derived from and identical with 1891, c. 34, s. 4 (b).

(c) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that

it was a correct and fair representation of such statement or copy of or extract from such document, or unless it is proved that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, [advertisement] or notice, and that the prospectus, [advertisement] or notice was issued without his authority or consent; or that the prospectus, [advertisement] or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent; or that after the issue of such prospectus, [advertisement] or notice and before allotment or issue of the shares, debenture stock, annuities on lives, or other securities as the case may be, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal and of the reason therefor, to be given. 54 Vict. c. 34, s. 4.

Derived from 1891, c. 34, s. 4 (c); omitting "advertisement" from 8th line, and 9th line (2nd); also omitting the word "advertisement" wherever it appears in this section; and inserting between "stock" and "or" on 16th line the words "annuities on lives"; and substituting "thereunder" for "as the case may be" on same line (16th); in all other respects same as in 1897, c. 29, s. 12 (c).

13. Sections 17, 18, 19, 20, 21 and 22 of the Act passed in the 57th year of Her Majesty's reign, entitled An Act relating to Mines and Mining Lands, are repealed, and all mining companies, whether heretofore or hereafter incorporated under any general Act in force in this Province, shall be subject to the provisions of this Act.

Repeals 57 Vict. c. 16, s.-s. 17, 22.

COMPANIES FOR CONSTRUCTING WORKS ON MINING LANDS.

14.—(1) Subject to the provisions of The Ontario Companies Act, the Lieutenant-Governor in Council may, by Letters Patent under the Great Seal, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting the said persons and others who may become shareholders in the company thereby created a body corporate and politic for the purpose of acquiring, holding, constructing, maintaining and repairing roads, bridges, improvements in waterways, and other means of communication and drainage works, and other improvements upon, through, or over or adjacent to, or leading to or from, mining lands.

Incorporation of companies for construction of works on mining lands, together with sub-sections (2) (a), (b), (c), (d), (e), (f), is original.

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Historically reference is made to 1864, c. 23, s. 1 and s.-s. 1 to 10, which is repealed by 1874, c. 35, s. 59; see also 1881, c. 18, s. 3, s.-ss. 1 to 5; see also 1887, R. S. O. c. 157, s. 78, and sub-sections.

(2) Every company incorporated under this section shall have power, for carrying out the objects of incorporation only:

- (a) To construct, maintain and keep in repair, roads, bridges, waterways, drainage works and other improvements and means of communication, through, over, or adjacent to, or leading to or from, mining lands.
- (b) To acquire by purchase, lease, concession, license, exchange or other legal title, and hold lands and other properties necessary for the construction of such works, and from time to time to sell and dispose of all such lands as may be found to be unnecessary or unsuitable for the purposes of the company.
- (c) To demand and receive from persons and corporations for the use of such works, such fees and tolls as may be fixed by the company, subject to approval by the Lieutenant-Governor in Council.
- (d) To build, acquire, own, charter, navigate and use, steam and other vessels.
- (e) To enter into any arrangements for sharing profits, union of interest, or co-operation with any other person or company, carrying on, or about to carry on, any business or transaction which may be of benefit to any company incorporated under this section.
- (f) To do all such acts, matters and things as shall be incidental or necessary to the due attainment of the above objects or any of them.

BOUNDARIES OF NEW BRUNSWICK.

(See Houston's Const. Doc. p. 272.)

"That New Brunswick shall be bounded on the west by the boundary of the United States, as traced by the Commissioners of Boundary under the Treaty of Washington, dated August, 1842, from the source of the St. Croix to a point near the outlet of Pech-la-

wee-kaa-co-nies or Lake Bean, marked A in the accompanying copy of a part of plan 17 of the survey of the boundary under the above treaty; thence by a straight line connecting that point with another point to be determined at the distance of one mile due south from the southernmost point of Long Lake; thence by a straight line drawn to the southernmost point of the fiefs Madawaska and Temiscouata, and along the south-eastern boundary of those fiefs to the south-east angle of the same; thence by a meridional line northwards till it meets a line running east and west, and tangent to the height of land dividing the waters flowing into the River Rimouski from those tributary to St. John; thence along this tangent line eastwards until it meets another meridional line tangent to the height of land dividing waters flowing into the River Rimouski from those flowing into the Restigouche River; thence along this meridional line to the 48th parallel of latitude; thence along that parallel to the Mistouche River; and thence down the centre of the stream of that river to the Restigouche; thence down the centre of the stream of the Restigouche to its mouth in the Bay of Chaleurs; and thence through the middle of that bay to the Gulf of the Saint Lawrence; the islands in the said rivers Mistouche and Restigouche to the mouth of the latter river at Dalhousie being given to New Brunswick."

BOUNDARIES OF NOVA SCOTIA.

(See Houston's Const. Documents, p. 272.)

"To the northward, our said Province shall be bounded by the southern boundary of our Province of Quebec as far as the western extremity of the Bay des Chaleurs; to the eastward by the said bay, and the Gulf of St. Lawrence, to the cape or promontory called Cape Breton in the island of that name, including that island, the island of St. Johns, and all other islands within six leagues of the coast; to the southward by the Atlantic Ocean from the said cape to Cape Sable, including the island of that name, and all other islands within 40 leagues of the coast, with all the rights, members and appurtenances, whatsoever, thereto belonging; and to the westward, although our said Province hath anciently extended, and doth of right extend, as far as the River Pentagoet or Penobscot, it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the River St. Croix; by the said river to its source, and by a line drawn due north, from thence to the southern boundary of our colony of Quebec."¹

¹ See Halliburton's History of Nova Scotia, Vol. II., pp. 1-2.

BOUNDARIES OF BRITISH COLUMBIA.

29 & 30 VICT. (IMP.) C. 67.

CHAPTER LXVII.

An Act for the union of the Colony of Vancouver Island with the Colony of British Columbia.

[6th August, 1866.]

Section 1. This Act may be cited as "**The British Columbia Act, 1866.**"

7. Until the union, British Columbia shall comprise all such territories within the dominions of Her Majesty as are bounded to the south by the territories of the United States of America, to the west by the Pacific Ocean and the frontier of the Russian territories in North America, to the north by the sixtieth parallel of north latitude, and to the east, from the boundary of the United States northwards by the Rocky Mountains, and the one hundred and twentieth meridian of west longitude, and shall include Queen Charlotte's Island and all other islands adjacent to the said territories except Vancouver Island and the islands adjacent thereto.

8. After the union, British Columbia shall comprise all the territories and islands aforesaid, and Vancouver Island, and the islands adjacent thereto.

CHAPTER 190.

(British Columbia R. S. 1897.)

An Act to confirm to the Crown all unrecorded and unappropriated water and water power in the Province, and to consolidate and amend the law relating to the acquiring of water-rights and privileges for ordinary domestic, mining and agricultural purposes, and for making adequate provision for municipal water supply, and for the application of water power to industrial and mechanical purposes.

Whereas by the "Water Privileges Act, 1892," all water and water power in the Province, not under the exclusive jurisdiction

of the Parliament of Canada, remaining unrecorded and unappropriated on the 23rd day of April, 1892, were declared to be vested in the Crown in right of the Province, and it was by the said Act enacted that no right to the permanent diversion or exclusive use of any water or water power so vested in the Crown should after the said date be acquired or conferred save under privilege or power in that behalf granted or conferred by Act of the Legislative Assembly theretofore passed, or thereafter to be passed:

And whereas the "Land Act," the "Placer Mining Act, 1891," and the "Mineral Act, 1896," contain provisions authorizing the diversion and use of water from natural water-courses, and the acquisition of rights to the use of water upon the conditions as to such acquisition and diversion in the said Acts contained:

And whereas it is necessary and expedient at the present session, to provide for the due conservation of all water and water-power so vested in the Crown as aforesaid, and to provide means whereby such water and water-power may be made available to the fullest possible extent in aid of the industrial development, and of the agricultural and mineral resources of the Province:

And whereas for the furtherance of the purposes aforesaid, it is expedient to enact an exclusive and comprehensive law governing the granting of water-rights and privileges, and to provide and regulate the mode of acquisition and enjoyment of such privileges, and the royalties payable to the Crown in respect thereof:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "**The Water Clauses Consolidation Act, 1897.**" 1897, c. 45, s. 1.

INTERPRETATION.

2. In the construction and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them:—

"Chief Commissioner of Lands and Works" shall mean and include the Chief Commissioner of Lands and Works, and any person for the time being lawfully acting in that capacity.

"Commissioner" shall mean the Chief Commissioner of Lands and Works of this Province, or the person acting as such for the time being, and shall include every Stipendiary Magistrate for the time being in charge of any district, and every person duly authorized by the Lieutenant-Governor in Council to act as and for the Chief Commissioner of Lands and Works, as Assistant Commissioner of Lands and Works in any district in which the land that may be referred to lies, other than that in which the chief office of the Lands and Works Department is situated, and any other district or districts for which no such Assistant Commissioner of Lands and Works as aforesaid has been appointed.

"Crown Lands" shall mean all lands of this Province, held by the Crown without encumbrance.

"Gold Commissioner" shall mean and include the person for the time being holding the office of Gold Commissioner by appointment of the Lieutenant-Governor in Council under the "Mineral Act," and having territorial jurisdiction:

"Water" or "streams" shall include all natural water-courses, whether usually containing water or not, and all rivers, creeks, and gulches; and all water-power, not being waters under the exclusive jurisdiction of the Parliament of Canada.

"Unrecorded water" shall mean all water which for the time being is not held under and used in accordance with a record under this Act, or under the Acts repealed hereby, or under special grant by Public or Private Act, and shall include all water for the time being unappropriated or unoccupied, or not used for a beneficial purpose.

"Ditch" shall include a flume, pipe or race, or other artificial means for conducting or diverting water.

"Ditch-head" or "point of diversion" shall mean the point in a natural stream or lake, or other source where water is first taken into a ditch.

"Record" shall mean an entry in some official book kept for that purpose.

"Mine" shall include "claim" and "mineral claim," and shall mean any land held or occupied under the provisions of the mining

laws of the Province, for the purpose of winning and getting therefrom minerals, whether precious or base; and whether held in fee simple or by virtue of a record or lease; and "owner of a mine" shall mean owner of a mine as above defined.

"Owner of land" shall include pre-emptor or other lawful occupant of Crown lands:

"Municipality" shall include municipal corporation.

"Unincorporated locality" shall mean and include any portion of the Province not exceeding two thousand acres in area, and not being or comprising a municipality, or portion thereof.

"Specially incorporated company" shall mean a company incorporated pursuant to the provisions of section 132 hereof."

In defining any word or expression used in this Act relating to a municipality, or to municipal matters, and not by this section expressly defined, reference may be had to the interpretation section of the "Municipal Clauses Act."

In defining any word or expression used in this Act relating to mines and minerals, and not by this section expressly defined, reference may be had to the interpretation section of the "Mineral Act, 1896," and of the "Placer Mining Act." 1897, c. 45, s. 2.

Sec. 3 (not printed).

PART I.

CONFIRMING TO THE CROWN ALL UNRECORDED WATER.

4. The right to the use of the unrecorded water at any time in any river, lake, or stream, is hereby declared to be vested in the Crown in the right of the Province, and, save in the exercise of any legal right existing at the time of such diversion or appropriation, no person shall divert or appropriate any water from any river, watercourse, lake, or stream, excepting under the provisions of this Act, or of some other Act already or hereafter to be passed, or except in the exercise of the general right of all persons to use water for domestic and stock supply from any river, lake or stream vested in the Crown, and to which there is access by a public road or reserve. 1897, c. 45, s. 4.

5. No right to the permanent diversion or to the exclusive use of the water in any river, lake, or stream shall be acquired by any riparian owner, or by any other person, by length of use or otherwise than as the same may be acquired or conferred under the provisions of this Act, or of some existing or future Act. 1897, c. 45, s. 5.

6. The Lieutenant-Governor in Council may from time to time impose and reserve to the Crown, in right of the Province, such rents, royalties, tolls and charges in respect of the waters, or of the lands of the Crown and of the powers, rights and privileges, which may be acquired in pursuance of this Act, as by the Lieutenant-Governor in Council shall be deemed to be just and proper, and may likewise make and pass such regulations and rules as may be deemed necessary and advisable for the collection and enforcement of such rents, royalties, tolls and charges, or any of them:

(a) Provided, that where by Order in Council such rents, royalties, tolls and charges are fixed in respect of any power, right or privilege, the same shall be permanent, for the space of three years next succeeding the passing of such Order in Council fixing the same, and thereafter shall be subject to triennial adjustment, increase or decrease.

PART II.

THE ACQUISITION OF WATER BY RECORD FOR ORDINARY DOMESTIC, AGRICULTURAL, AND MINING PURPOSES.

7. Every right, power, and privilege conferred by and acquired under this Act shall be subject to and conditional upon the reasonable use for the purposes for which such right, power, or privilege is conferred and acquired:

(a) Provided that a mortgagee or encumbrancer shall, notwithstanding abandonment or non-user on the part of the mortgagor, under his mortgage or encumbrance, hold all records and water rights appurtenant to the lands or mine charged for such period as may be reasonable to enable him to realize his security; and the question of what is a reasonable time shall, in each case, be a question of fact dependent on the special circumstances, and to be determined by the Commissioner or Gold Commissioner. 1897, c. 45, s. 7.

8. Every owner of land may secure the right to divert unrecorded water from any stream or lake for agricultural, domestic, or

for mechanical or industrial purposes, and purposes incidental thereto, to an amount reasonably necessary therefor, upon obtaining a record thereof in manner hereinafter appointed. 1897, c. 45, s. 8.

9. Thirty days previous to the making of the record, the applicant shall post, at the following places, a notice in writing of his intention to apply for the record therein referred to, viz.: At the point of proposed diversion; on the ground on which such water is intended to be used; on each person's land to be crossed by the water in course of transit to the place of user; and in the office of the Commissioner for the district.

(2) Such notice shall contain the following particulars:

- (a) The name of the applicant;
- (b) The name, or if unnamed, a sufficient description of the stream, lake, or other source from which such water is intended to be taken;
- (c) The point of diversion or intended ditch-head where the water is diverted from any stream for the purpose of developing power; the applicant shall also state the point at which it is to be returned, and the difference in altitude between the point of diversion and the point where it is to be returned; where the water is to be used for mining purposes, the point where the water is to be returned to the stream shall be given;
- (d) The means by which it is intended to store or divert the same;
- (e) The number of inches of water applied for;
- (f) The purpose for which it is required, stated with reasonable particularity;
- (g) The land upon which the water is to be used;
- (h) The date of the posting of the notice, and the date on which application will be made to the Commissioner for the granting of the record. 1897, c. 45, s. 9.

10. Every owner of a mine may secure the right to divert unrecorded water from any stream or lake, for any mining purpose, or other purposes incidental thereto, or for milling, concentrating, or

other purposes in connection with the working of his mine, to an amount reasonably necessary therefor upon obtaining a record thereof in manner hereinafter provided. 1897, c. 45, s. 10.

11. Thirty days previous to the making of the record the applicant shall post at the following places a notice in writing of his intention to apply to the Gold Commissioner for the record therein referred to, at the following places, viz.:—

(1) At the point of the proposed diversion; on the mine on which such water is intended to be used; on each mine or person's land to be crossed by the water in course of transit to the place of user; and in the office of the Mining Recorder for the district; and shall forward a copy of his notice of application to the Gold Commissioner;

(2) Such notice shall contain the following particulars:—

- (a) The name of the applicant;
- (b) The number of the applicant's free miner's certificate;
- (c) The name, or if unnamed, a sufficient description of the stream, lake, or other source from which such water is intended to be taken;
- (d) The point of diversion or intended ditch-head; where water is diverted from any stream for the purpose of developing power, the applicant shall also state the point at which it is to be returned, and the difference in altitude between the point of diversion and the point where it is to be returned; where the water is to be used for mining purposes, the point where the water is to be returned to the stream shall be given;
- (e) The means by which it is intended to store or divert the same;
- (f) The number of inches of water applied for;
- (g) The purpose for which it is required, stated with reasonable particularity;
- (h) The mine upon which the water is to be used;
- (i) The date of the posting of the notice, and the date on which application will be made to the Gold Commissioner for the granting of the record. 1897, c. 45, s. 11.

12. On the day mentioned in the notice of application, or at a subsequent day and time to be fixed by the Commissioner or Gold Commissioner, as the case may be, application shall be made by or on behalf of the applicant, either by attendance in person or by agent, or in writing, for a record in accordance with the terms of the notice. 1897, c. 45, s. 12.

13. The Commissioner or Gold Commissioner shall at such day and time proceed to adjudicate upon the application, and upon proof to his satisfaction of the publication of notice in manner aforesaid, and of the right of the applicant to apply for a record under the foregoing provisions of this Act or any of them, and of the volume of unrecorded water available for diversion, having regard to existing rights and records, whether held by land owners or mine owners and to pending applications, may grant to the applicant a record of such amount of water and for such purposes as in the discretion of the Commissioner or Gold Commissioner shall be reasonably required by the applicant for the purposes specified in his notice of application. 1897, c. 45, s. 13.

14. The Commissioner or Gold Commissioner may adjourn such adjudication from time to time as circumstances may render expedient, and shall have power to take evidence by statutory declaration and to summon and examine witnesses upon oath, and to hear all parties whose rights are or may be affected by the application. 1897, c. 45, s. 14.

15. The record granted upon such application shall be forthwith entered by the Commissioner or Gold Commissioner in the Book of Record of Water Rights, and shall contain the particulars required to be contained in the notice of application as confirmed by or modified upon the adjudication, and any other particulars directed to be inserted therein by regulations in that behalf, with such additions and variations as circumstances may require;

(2) A certified copy of the record shall be furnished by the Commissioner, or Gold Commissioner, to the applicant, and shall, without proof of the signature of the Commissioner, or Gold Commissioner, be evidence in all Courts and proceedings of the matters in such record set forth;

(3) The Gold Commissioner shall forthwith forward a certified copy of every record made by him to the Mining Recorder of the district or place in which the water comprised in such grant is to be

used, and the recorder shall, without fee, transcribe such copy into his Book of Record of Water Rights. 1897, c. 45, s. 15.

16. On any dispute arising prior to record, priority of notice of application shall constitute priority of right. 1897, c. 45, s. 16.

17. A record shall speak from the day on which it is made. 1897, c. 45, s. 17.

18. Any owner of land or owner of a mine who would be entitled to apply for a record of the water in any stream or lake, if the same were unrecorded, and who is desirous of obtaining a record of the same, but is prevented, wholly or in part by the existence of prior records, whether obtained under this or any other Act, may apply *ex parte* to the Commissioner, or Gold Commissioner, for leave to apply for a record, notwithstanding the existence of such prior records, and upon the furnishing to such Commissioner, or Gold Commissioner, of *prima facie* proof that the water allowed to be diverted by any or all of such existing records is wholly, or in part, unused thereunder, or unnecessary for, or in excess of the requirements of the purposes specified therein, such Commissioner, or Gold Commissioner, shall, by writing under his hand, authorize such owner to give notice of his intention to apply, and to apply, for a record of the water of such lake or stream, and such owner may thereupon apply for a record accordingly, and shall post up and forward notice of his application, and proceed therein in form and manner hereinbefore provided for the making of an application for a record of unrecorded water;

(2) The Commissioner, or Gold Commissioner, in adjudicating upon the application of such owner, shall, after hearing all parties in interest and their witnesses, if any, or, if any party in interest do not appear, upon its being proved to his satisfaction that such party has had notice of the terms of such application and of the date and time on which it is made, either refuse the application, or where it is proved to his satisfaction that he is justified in making a cancellation or reduction as hereinafter mentioned, grant a record for such amount of water as, in his discretion, is reasonably necessary for the purposes specified in the application, and may, for the adjustment of the supply of available water, cancel any existing record obtained under this Act, or any Act hereafter to be passed, on the ground of abandonment or non-user, and reduce any such existing record in part, either as to the amount of water, or as to the times of using such water, where it is proved to his satisfaction that the

amount of water thereby recorded is in excess of the amount required for the purposes specified in the record, or that such water is necessary for such purposes only during certain periods, and may during the intervals be applied to other purposes, and may:

(3) In respect of any existing record obtained under any Act heretofore passed, in respect of which *prima facie* abandonment or non-user, in whole or in part, is proved to his satisfaction, grant to the applicant an interim record entitling the applicant to the use of the water comprised in such existing record, in whole or in part, until the owner of such existing record, upon giving notice of his intention in that behalf at the time and in manner fixed by the Commissioner (to be not less than three months' notice in any case) shall, if entitled by law so to do, *bona fide* resume under his original record the use of the water comprised in such interim record, or such part thereof as he may reasonably require, to be ascertained by the Commissioner, or Gold Commissioner, and the rights of the holder of the interim record shall, at the expiration of the period fixed in such notice, and in respect of the water therein specified, absolutely cease and determine, and he shall have no claim or right to compensation for any loss or damage caused to him by such resumption of use under the original record. 1897, c. 45, s. 18.

19. Every record obtained by the owner of land or the owner of a mine, shall be deemed as appurtenant to the land or mine in respect of which such record is obtained;

(2) All assignments, transfers, or conveyances permitted by law of any mine, or of any pre-emption rights, and all conveyances of land in fee, whether such assignments, transfers or conveyances were or shall be made before or after the passing of this Act, shall be construed to have conveyed and transferred, and to convey and transfer, any and all recorded water privileges appurtenant to the premises assigned, transferred, or conveyed, and shall pass with any of the premises aforesaid upon devise or descent. 1897, c. 45, s. 19.

20. Whenever a mine shall have been worked out or abandoned, or a pre-emption cancelled or abandoned, or whenever the occasion for the use of the water upon the mine or pre-emption shall have permanently ceased, all records appurtenant thereto shall be at an end and determined. 1897, c. 45, s. 20.

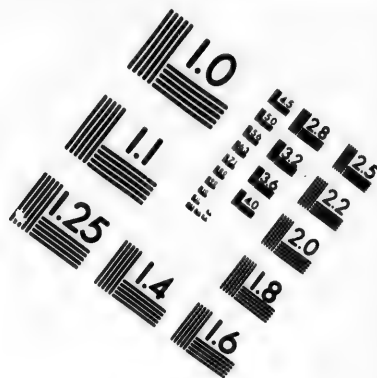
21. Where any record authorizes the diversion of water for two or more purposes, or to be used in two or more places, or where the holder of the record desires to apportion the water in specified pro-

portions between two or more parts of the land or mine on which the water is authorized to be used, the Commissioner, or Gold Commissioner, upon application made to him for that purpose by the holder of the record, or any person claiming through or under him by assignment or otherwise, and upon its being proved to his satisfaction that the rights of third parties will not be prejudiced by such apportionment, shall make a record apportioning the water authorized to be diverted in accordance with the terms of the application for apportionment, and shall endorse upon the original record a memorandum of and reference to the record of such apportionment. 1897, c. 45, s. 21.

22. A corresponding record and references may be made upon similar application where mines or lands are consolidated or pass into a single or joint ownership, and it is proved to the satisfaction of the Commissioner, or Gold Commissioner, that it is expedient for the purpose of the more effectual and beneficial use of the water authorized to be diverted, that the original records be consolidated in accordance with the terms of the transfer or consolidation of the lands or mines. 1897, c. 45, s. 22.

23. Within 60 days after the record is made, or within such further time as the Commissioner, or Gold Commissioner, may, in his discretion, upon proof to his satisfaction of special circumstances rendering further time necessary, by writing duly recorded in the book of the record of water grants, the holder shall commence the excavation and construction of the ditch, flumes, and works in or by means of which he intends to divert, convey or utilize the water, and shall prosecute the work diligently and uninterruptedly to completion: Provided always, that the Commissioner, or Gold Commissioner, may, in his discretion, allow such work to cease for any necessary or reasonable time, upon cause being shown. Upon the non-fulfilment of any of the conditions of this section, the Commissioner, or Gold Commissioner, may, upon notice, cancel the record. 1897, c. 45, s. 23.

24. The right of entry on and through the mines and lands of others for carrying water upon, over, or under the said mines and lands, and for the construction of all necessary works in connection therewith, may be claimed and exercised by the holder of a water record, upon giving, previously to such entry, adequate security to the satisfaction of the Commissioner, or Gold Commissioner, for any loss or damages which may be caused by reason of such entry; such security to be tendered to the Commissioner, or Gold Commissioner,



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for approval, with a notice, a copy of which shall be served on the owner of mines or lands affected, that at a day and time to be specified in such notice, application will be made to the Commissioner, or Gold Commissioner, for approval of security, and upon such application, upon hearing what is alleged by all parties in interest, the Commissioner, or Gold Commissioner, may either accept or reject such tendered security, in whole or in part, and so from time to time until adequate security is tendered and approved.

(a) After such entry, the holder of the water record so entering shall make full compensation to the occupant or owner of such mines or lands for any loss or damages which may be caused by reason of such entry; and for the recovery of such loss or damages, the owner of the mines or lands entered upon, or other person damaged by such entry and works, may sue upon the security so given to the Commissioner, or Gold Commissioner, irrespective of the form and manner in which security may be made and given. 1897, c. 45, s. 24.

25. Whenever, in pursuance of the power conferred by the preceding section, it is intended to enter upon mines or occupied lands, three days' notice of such intention shall be given to the owner or occupant. 1897, c. 45, s. 25.

26. The holder of a water record may enter mines and lands for the purpose of repairing and maintaining the ditches, flumes, and works for conveying water under his record, but shall, if such mines or lands are occupied, give three days' notice to the occupant of intention to enter, except in cases of emergency, when immediate entry may be made. 1897, c. 45, s. 26.

27. The holder of any record may obtain permission from the Commissioner, or Gold Commissioner, to change the place of diversion or the course of his ditch or flume, on giving such notices and complying with such terms as the Commissioner, or Gold Commissioner, may require or impose. 1897, c. 45, s. 27.

28. Every holder of a record shall take all reasonable means for utilizing the water granted to him; and if he wilfully waste any water, or take a quantity of water in excess of his actual requirements, the Commissioner, or Gold Commissioner, may, upon notice, cancel or reduce the record, or impose all necessary conditions. 1897, c. 45, s. 28.

29. If, after a record of all the water in any stream has been made, for mining purposes, any placer mines are located and *bona*

fide worked below the point of diversion on the stream, the owner of such placer mines shall be entitled to the continuous flow in the stream past the mines of forty inches if two hundred inches be diverted, and sixty inches if three hundred inches be diverted, and no more, except upon paying to the holder of the record compensation equal to the amount of damage sustained by him on account of the allowance to the claim of such extra quantity of water; and, in computing such damage, the cost of the ditch shall be considered. 1897, c. 45, s. 29.

30. The owner of any ditch, flume, or pipe, shall, at his own expense, construct, secure and maintain all culverts necessary for the passage of waste and superfluous water flowing through or over any such ditch, flume, or pipe. 1897, c. 45, s. 30.

31. The owner of any ditch, flume or pipe shall construct and secure the same in a proper and substantial manner, and maintain the same in good condition and repair to the satisfaction of the Commissioner, or Gold Commissioner, so that the same shall at all times be of sufficient strength and capacity for the fulfilment of the purposes for which it was constructed and is used, and so that no damage shall occur to any road or work in its vicinity from the use of such ditch, flume, or pipe. 1897, c. 45, s. 31.

32. The owner of any ditch, flume or pipe shall be liable for and shall make good, in such manner as the Commissioner, or Gold Commissioner, shall determine, all damages which may be occasioned by or through such ditch, flume, or pipe breaking or being defective in construction, or out of repair, or of insufficient strength and capacity for the purposes, or any of them, for which it was constructed, or is from time to time used. 1897, c. 45, s. 32.

33. Any person heretofore or hereafter engaged in the construction of any road or work may, with the sanction of the Commissioner, or Gold Commissioner, cross, divert, or otherwise interfere with any ditch, water right, or other mining rights whatsoever, for such period, and upon such terms as the said Commissioner, or Gold Commissioner, shall direct and impose. 1897, c. 45, s. 33.

34. Nothing herein contained shall be construed to limit the right of the Chief Commissioner of Lands and Works to lay out, from time to time, the public roads of the Province, across, through, along, or under any ditch, water right, or mining right, in any Crown

land, without compensation, provided that as little damage as possible shall be done. 1897, c. 45, s. 34.

Section 36 provides for an appeal to the Supreme or County Court from the decision of a Commissioner, or Gold Commissioner.

Section 37 provides that the respondent may apply for the security of costs.

Section 38 provides for the jurisdiction of the Judge of the Court of Appeal.

Section 39 provides for an appeal to the full Court.

143. In measuring water in any ditch or sluice, in the absence of any rules in that behalf established, by order or orders in Council, and applied to any record or any class of records, the following rules shall be observed: The water taken into a ditch or sluice shall be measured at the ditch or sluice head. No water shall be taken into a ditch or sluice except in a trough placed horizontally at the place at which the water enters it, and which trough shall be extended two feet beyond the orifice for the discharge of the water. One inch of water shall mean the quantity that will pass through an orifice two inches high by half an inch wide made in a two-inch plank, the water to have a constant head of seven inches above the upper side of the orifice, and every additional inch of water shall mean so much as will pass through the said orifice extended horizontally half an inch. In cubic measurement, one inch of water shall mean a flow of water equal to 1.68 cubic feet per minute. 1897, c. 45, s. 143.

146. Any holder of any water record, or other person who shall wrongfully waste any quantity of water heretofore or hereafter acquired, by record or otherwise, by diverting any more of it from its natural course, through any ditch or otherwise, than the quantity actually required by him for the purposes specified in the record by virtue of which such water has been diverted, or for any other purpose for which such water may lawfully be used, shall, upon summary conviction before a Commissioner, or Gold Commissioner, who shall, for the purposes of this section, have all the powers of a Stipendiary Magistrate, be liable to a penalty not exceeding one hundred dollars for each such offence. 1897, c. 45, s. 146.

49 VICT. CHAP. 18 (B. C.).

(No. 56.)—An Act to encourage the erection of Smelting Works.

[6th April, 1886.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. It shall be lawful for the Chief Commissioner, subject to the approval of the Lieutenant-Governor in Council, to contract with any person for the payment to him out of the Consolidated Revenue of the Province of any sum not exceeding seven thousand dollars, by way of bonus, for the erection of smelting works at some place in the Province with, under, and subject to such terms and conditions as to the said Chief Commissioner, with such approval, may seem advisable; but the contract shall contain conditions that the bonus shall not be paid until smelting works shall have been erected, capable of crushing, reducing, and treating at least thirty tons of ore per day of twenty-four hours, nor unless a quantity of not less than one thousand tons of ore shall have been first crushed, reduced and treated.

R. S. B. C. (1897)—CHAPTER 74.

An Act respecting the Storage of Gunpowder and other Explosive Substances.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as the "**Explosives Storage Act**," C. A. 1888, c. 43, s. 1.

PRELIMINARY.

2. Every building used for storage or keeping of any quantity of gunpowder exceeding two hundred pounds in weight, or used for storage, or keeping any quantity of any other explosive substances exceeding ten pounds in weight, shall be deemed a powder magazine within the meaning of this Act. C. A. 1888, c. 43, s. 2.

3. This Act shall not apply to, nor affect, any magazine belonging to Her Majesty, nor to the conveyance of gunpowder or other explosive substance or stores to and from Her Majesty's magazines by Her Majesty's naval or military forces, nor shall this Act apply to any magazine erected by proprietors of coal mines in or about any colliery for colliery purposes, nor to any magazine erected by railway companies in or about the line of any railway for railway purposes, nor to the conveyance of gunpowder or other explosive substances to or from such magazine. C. A. 1888, c. 43, s. 3.

STORAGE AND CONVEYANCE OF EXPLOSIVES.

4. No powder magazine shall be kept or erected within the limits of any city in the Province, nor within two miles thereof. C. A. 1888, c. 43, s. 4.

5. The Lieutenant-Governor in Council shall, from time to time, make all necessary regulations, consistent with the provisions of this Act, for the receipt, conveyance, storage, and delivery of gunpowder, or any other explosive substance, within two miles of the limits of any city. C. A. 1888, c. 43, s. 5.

6. No gunpowder, or other explosive substance, shall be stored, kept, conveyed, received, or delivered within two miles of any city, except in accordance with the regulations made, or to be made, by virtue of the last preceding section. C. A. 1888, c. 43, s. 6.

7. No nitro-glycerine shall be kept in any building or elsewhere, except a license from the Lieutenant-Governor in Council shall be first granted therefor. C. A. 1888, c. 43, s. 7.

PENALTIES.

8. The regulations to be made by virtue of this Act may impose penalties for all infractions thereof, or for any infraction of this

Act; the same may be recovered in a summary manner, before any justice of the peace having jurisdiction within the said limits, who may order any person convicted before him of any such infraction, to pay such penalty or penalties with costs, to be imprisoned for a term not exceeding two months, unless the said penalty or penalties and costs, including the costs of conveyance to gaol, be sooner paid. C. A. 1888, c. 43, s. 8.

9. Every person who shall keep or erect any powder magazine within the limits of any city in the Province, or within two miles of any city, shall be guilty of an offence against this Act, and shall, upon summary conviction thereof before any justice of the peace, be liable to a penalty not exceeding five hundred dollars. C. A. 1888, c. 43, s. 9.

10. Every proprietor or lessee of any powder magazine, shall be personally liable for any penalties imposed for the contravention of any regulations made by virtue of this Act, in respect of the conveyance of powder, or other explosive substances, to or from such magazine. C. A. 1888, c. 43, s. 10.

Extract from "**Execution Act**," R. S. B. C. (1897) c. 72.

12. Any interest which a free miner has in any mineral claim before the issue of a Crown grant therefor, or in any mining property as defined in the "Mineral Act," and any placer claim and property, as defined in the "Placer Mining Act," may be seized and sold by the sheriff, under and by virtue of an execution issued against goods and chattels. 1895, c. 21, s. 3.

R. S. B. C. (1897).

CHAPTER 44. PART III.

EXTRAORDINARY POWERS OF COMPANIES.

Issue of shares without personal liability by Mining Companies.

56. The Memorandum of Association of a company incorporated or re-incorporated under this Act, the objects whereof are restricted to acquiring, managing, developing, working and selling

mines, mineral claims and mining properties, and the mining, getting, treating, refining and marketing of mineral therefrom, may contain a provision that no liability beyond the amount actually paid upon shares or stock in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder, and the Certificate of Incorporation, issued under section 20 of this Act, shall state that the company is specially limited under this section.

(a) The licence or certificate of registration to any extra-provincial company (the objects whereof are restricted as aforesaid) issued under the provisions of Part VI. of this Act, may, if applied for the application for such license or the petition for such registration contain the provision aforesaid. 1897, c. 2, s. 56.

57. Where a certificate of incorporation incorporating any such company, or a license or certificate of registration to any extra-provincial company has been issued containing the provision mentioned in section 56 of this Act, every certificate of shares or stock issued by the company shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Issued under section 56, respecting Mining Companies of the 'Companies Act, 1897,'" and where such shares or stock are issued, subject to further assessments, the word "assessable," or if not subject to further assessments, the word "non-assessable," as the case may be. 1897, c. 2, s. 57.

58. Every mining company, the Memorandum of Association of which contains the said provision, shall have written or printed on its charter, prospectuses, stock certificates, bonds, contracts, agreements, notices, advertisements, and other official publications, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letter-heads of the company, immediately after or under the name of such company, and shall have engraved upon its seal the words "non-personal liability;" and every such company which refuses, or knowingly neglects, to comply with this section shall incur a penalty of twenty dollars for every day during which such name is not so kept written or printed, recoverable upon summary conviction; and every director and manager, secretary and officer of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. 1897, c. 2, s. 58.

59. In the event of any call or calls on assessable shares in a company so incorporated, remaining unpaid by the subscriber thereto, or holder thereof, for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash, by giving notice of such sale in some newspaper published or circulating in the city or district where the principal office of the company is situated, for a period of one month; and said notice shall contain the number of the certificate or certificates of such shares, and the number of shares, the amount of the assessment due and unpaid, and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such subscriber or holder by registered letter, mailed to his last known address; and if the subscriber or holder of such shares shall fail to pay the amount due upon such shares, with interest upon the same, and cost of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same or such portion thereof as shall suffice to pay such assessment, together with interest and cost of advertising; provided, that if the price of the shares so sold exceed the amount due with interest and cost thereon, the excess thereof shall be paid to the defaulting subscriber or holder. 1897, c. 2, s. 59.

60. No shareholder or subscriber for shares in any company, so incorporated, shall be personally liable for non-payment of any calls made upon his shares, beyond the forfeiture and sale, in the event of non-payment of such calls of the amount, if any, already paid on the shares held or subscribed for, nor shall such shareholder or subscriber be personally liable for any debt contracted by the company, or for any sum payable by the company beyond the amount, if any, paid by him upon such shares. 1897, c. 2, s. 60.

61. Wherever any shares have been heretofore issued by any company, duly incorporated under any Act, as fully paid up shares, either at a discount or in payment for any mine, mineral claim, or mining property purchased or acquired by such company, or for the acquiring whereof such company has been incorporated, all such shares shall, except as to any debts contracted by the company before the passing of this Act (in regard to which the liability on such shares shall be the same as if this Act had not been passed) be deemed and held to be fully paid up, and the holder thereof shall be subject to no personal liability thereon, in the same manner as if the memorandum of association of the company had contained the provision aforesaid. 1897, c. 2, s. 61.

R. S. B. C. (1897)—CHAPTER 113.

An Act to Amend and Consolidate the Laws affecting Crown Lands.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as the "**Land Act.**" C. A. 1888, c. 66, s. 1.

58. There is reserved to and for the use of Her Majesty, her heirs and successors, a royalty of fifty cents for every thousand feet, board measure, upon and in respect of all timber suitable for spars, piles, saw logs, or railroad ties, props for mining purposes, shingle or other bolts of cedar, fir or spruce, and a royalty of twenty-five cents for every cord of other wood cut upon Crown lands, patented lands, timber leaseholds, or timber limits, and upon any lands hereafter granted. Piles shall be measured by the running foot, and railway ties and props shall be measured by the cord; and for the purposes of this Act two hundred running feet of piles, or one cord of ties or props, shall be taken respectively as equal to one thousand feet board measure. 1896, c. 28, s. 2.

63. This Act shall not be construed so as to inflict penalties upon free miners engaged in prospecting, nor upon travellers, nor upon persons engaged in merely scientific pursuits, or exploring, nor upon farmers cutting timber in connection with their farms, nor upon persons cutting cordwood for personal use for fuel for domestic purposes and not for sale, or cutting cordwood for school purposes. 1896, c. 28, s. 5.

FREE MINERS' RIGHTS.

81. Nothing herein contained shall exclude free miners from entering upon any land in this Province, except, however, all lands reserved or used for naval or military purposes, and searching for and working minerals; Provided that such free miner, prior to so doing, shall give full satisfaction or adequate security, to the satisfaction of the Gold Commissioner, to the pre-emptor or tenant in fee simple, for any loss or damage he may sustain by reason thereof. If

the amount of compensation (if any) cannot be agreed upon, the Gold Commissioner of the district wherein the land lies, with the assistance, if desired by either party, of a jury of five persons to be summoned by him, shall decide the amount thereof, and such decision and award shall be final. The Judges of the Supreme Court, or any of them, or any Judge of the County Court, within his county, may perform any of the duties or powers of a Gold Commissioner under this section. C. A. 1888, c. 66, s. 95; 1891, c. 15, s. 14, and 1896, c. 21, s. 10.

82. Nothing in this Act contained shall be construed so as to interfere prejudicially with the rights granted to free miners under the "Mineral Act," or any subsequent Acts relating to gold mining; Provided, that there is hereby reserved from the lands whereon a free miner may enter and prospect all lands reserved or used for naval or military purposes, whether in the grant or reservation thereof, for such purposes the precious or base metal, or any of them, were reserved to the Crown and its licensees, or were not so reserved. C. A. 1888, c. 66, s. 96, and 1896, c. 28, s. 10.

RESERVATION OF ROYALTY ON COAL.

83. There is reserved to and for the use of Her Majesty, her heirs and successors, a royalty of five cents upon and in respect of each and every ton of merchantable coal raised or gotten from any lands acquired under the provisions of this Act; and in any Crown grant to be issued in pursuance of this Act there shall be contained a reservation of the said royalty; Provided that no royalty be reserved on dress or fine slack. C. A. 1888, c. 66, s. 97.

84. In all Crown grants heretofore issued, or which may be hereafter issued, by which the coal is reserved to the Crown, the coal so reserved shall become the property of the grantees and their assignees, and shall be subject to the royalty by this Act reserved. 1894, c. 24, s. 4.

85. All lands for which prospecting licenses have been issued under the "Coal Prospecting Act, 1883," shall, in case the same are purchased under the provisions of this Act, be subject to the royalty hereinbefore reserved. C. A. 1888, c. 66, s. 99.

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SHORT AGREEMENT TO AUTHORIZE A TRIAL OF
A MINE.

Memorandum that A. B., of _____, on the _____, doth hereby agree to give full, exclusive and irrevocable license and authority to E. F. and G. H. for 12 months, now next ensuing, to prospect, develop and work all that vein or part of a vein situate for the space of _____ yards in length and _____ yards in breadth (insert description). And also to prospect, develop and work within the limits aforesaid any other veins or parts of veins which may be discovered or intersected, except such parts thereof as may be then previously demised or authorized, to be worked upon the following terms, that is to say: That such trial or search shall be commenced within a month from the date hereof, and be thenceforth proceeded with regularly by at least _____ able and sufficient miners daily upon the average of the whole period; that the said E. F. or G. H., or their agents, shall at all times give a correct account of the state of such trial to the said (agent), or to the agents of the said _____ when thereto required; that one full part or share of all the ore produced, well washed and fit for smelting, shall be regularly rendered to the said A. B., and that all the ore produced which shall belong to other persons, shall be wholly rendered to such persons in its natural and unwashed state.

FORM OF OPTION TO PURCHASE WITH RIGHT TO SINK TEST SHAFT.

This indenture made in duplicate this _____ day of _____, in the year of our Lord one thousand eight hundred and ninety-

Between _____ of the _____ of _____ in the _____ of _____, prospector, and _____ of the _____ of _____, in the _____ of _____, and Province of Ontario, prospector, hereinafter called "the Prospectors," of the one part; and _____ of London, England, hereinafter called "the Company," of the other part.

Whereas the Prospectors have represented to the Company that they are entitled to a lease under "The Mines Act" of Mining Location Number _____, containing _____ acres, situated _____ in the District of Rainy River, and Province of Ontario, and are desirous of having the Company develop the said Mining Location for the benefit and advantage of the Prospectors in adjoining locations.

And, whereas, the Prospectors have offered to transfer to the Company all their interest in the said Mining lease of said Mining Location , if the Company would enter into this agreement, which the Company has consented to do.

Now, therefore, this agreement witnesseth, that in consideration of the premises and of the covenants and agreements herein contained, the Prospectors for themselves, their executors, administrators and assigns, and the said Company for themselves, their successors and assigns, covenant and agree each with the other as follows:—

(1) The Prospectors will forthwith transfer to the Company the said lease of Mining Location Number absolute in form and effectual to vest the said Mining Location in the said Company free from all encumbrances.

(2) The Company will forthwith after the transfer of said mining lease to them, commence to sink a mining shaft on said location ; in case the Company do not sink the said shaft to a depth of feet, and desire to discontinue such sinking, then and in such case the Company agree to give up to the Prospectors any and all rights to said location held by them.

(3) That if after sinking said shaft to a depth of feet, or at any depth between feet and feet, the Company desire to discontinue sinking, then and in such case the Company hereby agree either to give up all rights to said location as above mentioned, or they may have the option to purchase the lease of said location outright for the price or sum of dollars.

(4) The Prospectors shall have the right at any time while such sinking as aforesaid is in progress, to examine such shaft and take samples therefrom.

In witness whereof the Prospectors have hereunto set their hands and seals, and the Company have executed this Agreement by , their attorney in Canada.

Signed, sealed and delivered)
in the presence of)

AGREEMENT FOR LEASE OF MINES.

Memorandum of agreement, made the day of , 18 .
Between (lessor) of the one part, and
(lessee) of the other part.

The said (lessor), for himself, his heirs and assigns, in consideration of the rent, reservations, stipulations and agreements herein-

after contained on the part of the said (lessee), his executors, administrators and assigns to be paid and performed, doth hereby contract and agree with the said (lessee), his executors, administrators and assigns, that he, the said (lessor), his heirs or assigns, shall and will (with the consent and approbation of such parties as shall be necessary), on or before the day of , now next ensuing, or at any time afterwards, upon the request in writing of the said (lessee), his executors, administrators or assigns, grant and deliver unto the said (lessee), his executors, administrators or assigns, a good and valid demise or lease of all, etc. (the parcels, habendum and reddendum, may be in the forms usually contained in leases):

And the said (lessee), for himself, his heirs, executors and administrators, doth hereby covenant and agree with the said (lessor), his heirs and assigns, that he the said (lessee), his executors, administrators and assigns, shall and will accept the said demise or lease when so granted as aforesaid, and execute a counterpart thereof when required by the said (lessor), his heirs or assigns, and pay one-half of the costs and charges attending the preparation and execution, as well of such lease and counterpart as of this present agreement and duplicate hereof.

And it is hereby declared and agreed that there shall be contained in the said lease the following covenants, provisoes and agreements on the part of the said (lessee), his executors, administrators and assigns, that is to say, etc. (here insert the clauses applicable to the particular description of lease intended to be granted, including the clause of re-entry, and including also a right in (lessor) to purchase the machinery and mining implements generally, or any portion thereof without purchasing the rest.

And it is hereby further agreed and declared, that the said lease shall contain on the part of the said (lessor), his heirs and assigns, proper covenants for title, for quiet enjoyment, and for further assurance; and also that it shall be lawful for the said lessee, his executors, administrators and assigns, upon payment and performance of the rents, covenants, and agreements on his and their part hereinbefore mentioned or referred to, to remove and take away within twelve months after the determination of the said term all the machinery, implements of mining and other materials used for the purposes aforesaid, and legally removable by a tenant, unless the same shall have been purchased by the said (lessor), his heirs or assigns; provided always, and it is hereby further declared and agreed, that until such lease shall be so granted as aforesaid, the said (lessee), his executors, administrators and assigns shall enter upon,

work and occupy the said mine and vein and premises hereby agreed to be demised, subject to the covenants, reservations, provisoes and agreements hereinbefore mentioned or referred to on his or their parts to be paid and performed as fully as if such lease had been actually executed and accepted, but that in case the said (lessee), his executors, administrators or assigns, shall not from time to time observe and perform such covenants, reservations, provisoes and agreements, then it shall be lawful for the said (lessee), his heirs and assigns, to enter into and upon the said mine or vein and premises hereby agreed to be demised, and the same to re-possess and enjoy as in his and their former estate, freed and discharged from this present agreement, and all actions, suits, claims and demands whatsoever in respect thereof; and all the estate or interest hereby agreed to be granted to the said (lessee), his executors, administrators or assigns, shall absolutely cease and determine both at law and in equity, but without prejudice to any legal or equitable remedies which may accrue to the said (lessor), his heirs and assigns, by reason of the non-observance or non-performance of any of the covenants, provisoes and agreements herein contained, either before or after such determination.

In witness, etc.

AGREEMENT FOR MINING SYNDICATE OR PARTNERSHIP.

This indenture, made the day of between (trustees), of the one part, and (other partners), of the other part: Whereas (recite lease of mines to trustees); and whereas the said parties hereto have agreed to enter into partnership in the working of the mines comprised in the said and in the selling of the produce thereof, upon the terms and in manner hereinafter contained and expressed; and whereas the said sum of \$ was contributed by the several parties hereto of the second part in the shares and proportions in which it is hereinafter provided that they shall be entitled to the property of the partnership or company intended to be hereby constituted, now this indenture witnesseth that, in pursuance of the said agreement, they, the said (trustees), hereby severally covenant with the said parties hereto, of the second part, severally and respectively, that they, the said (trustees), their executors, administrators and assigns, shall and will stand and be possessed of and interested in the mines, hereditaments and premises comprised in during the said term of years, and during any other term or terms which the said (trustees), their executors, administrators or assigns, acting as trustees for the partnership

hereby contemplated, may obtain therein [under any future lease or leases thereof, subject to the rent or rents and covenants in and by the said indenture of lease, or in and by any lease or leases to be hereafter thereof made as aforesaid, and on the lessee's part to be respectively paid, observed and performed] in trust for the several parties hereto of the first and second parts, and their respective executors, administrators and assigns, in the shares, proportions, and in manner hereinafter mentioned; and shall and will, during the continuance of the said term or terms, pay, observe and perform each rent or rents, covenants and conditions respectively as aforesaid; and this indenture witnesseth that, in further pursuance of the said agreement, and in consideration of the premises, each of the said parties hereto, so far as the covenants and agreements herein contained are to be performed and observed by him, his executors and administrators, hereby covenants with the others of them jointly and severally in manner following (that is to say):

1. The parties hereto shall and will, subject to the provisions herein contained, become and continue partners in the business of _____ as from the _____ day of _____ 18____, for the term of _____ years, or until the said mines shall be exhausted or abandoned, as hereinafter mentioned, for the purpose of digging, trenching, working and winning the mines, seams, deposits and veins comprised in _____ and of manufacturing, selling, and disposing of the produce thereof.

2. The business of the partnership shall be carried on under the name or firm of _____ (which firm is hereinafter called "the company"), at _____ aforesaid, or at such other place or places as shall be determined by a majority in value of the partners for the time being in manner hereinafter mentioned.

3. The title to and interest in the property of the company shall be divided into _____ equal shares, of which shares _____ shall belong to (partner), etc.

4. The original capital of the company shall consist of the said mines and premises comprised _____ (which are estimated and shall be taken to be of the value of \$ _____), and of money capital to the amount of \$ _____, which shall be contributed by the said partners in proportion to their respective shares and interest in the property of the company for the time being; and by such instalments and at such times as shall be agreed upon by a majority in value of the partners for the time being as hereinafter mentioned.

5. The capital of the company may at any time or times be increased, pursuant to a special resolution, to any amount not exceeding the further sum of \$ in addition to the original capital; and such additional capital shall be contributed and paid by the partners in proportion to their respective shares and interest in the property of the company for the time being, and shall be credited to them in the proportions in which it shall be brought in.

6. The company may, at any time or times, authorize any partner or partners to advance any sum or sums of money to the company, or to leave undrawn any sum or sums to which such partner or partners shall, upon the taking of any such annual account as is hereinafter mentioned, appear to be entitled in respect of profits, by way of loan to the company to be repayable to him or them by the company calendar months after demand in writing, and to bear interest as from the time of the making of such advance or of the taking of such account (as the case may be), at the rate of per cent. per annum. (Provided always, that no one partner shall, except pursuant to a special resolution, be authorized to advance or leave undrawn by way of loan any sum or sums in the aggregate exceeding the sum of \$ over and above the sum or sums for the time being contributed by him in respect of capital; and for this purpose the collective holders of any share or shares shall be deemed to be one partner.)

7. Upon the neglect or refusal of any partner to pay his proportion of the capital or any instalment thereof, it shall be lawful for the other partners for the time being, either to charge such defaulting partner with such proportion, and with interest thereon at the rate of per cent. per annum, or at their option to sell and dispose of all or any of the shares or share of such partner in manner hereinafter provided, in case of a breach of any of the agreements herein contained; and in case they shall sell and dispose of all the share and interest of such partner in the company, then to expel such partner in manner and with the consequences hereinafter provided.

8. of, etc., shall be the first manager of the company, and shall continue to act as such manager for the period of twelve calendar months from the date of these presents, and thereafter, unless and until he shall resign his appointment by giving to the company notice in writing of his intention to resign at least three calendar months before such resignation, or unless and until he shall be removed or dismissed in manner hereinafter provided.

9. The said manager shall manage and transact the works and business of the company, and act for and on behalf of the company, at such salary as shall be agreed upon, but subject in all respects to the superintendence, management, direction and control of the said company, and to removal or dismissal by them at any time after the expiration of months from the date of these presents, with or without previous notice or cause assigned; Provided that the said manager, in case he shall be removed or dismissed, shall be entitled to his salary, or an apportioned part thereof, for the full period of next following the day on which he shall receive notice of such removal or dismissal.

10. The company may from time to time appoint and remove any other person (whether partner or not) to be manager of the company, with such powers and authorities, upon such terms, and subject as aforesaid, subject to any agreement between the company and such other person on his appointment.

11. The manager for the time being may engage and employ such clerks, agents, servants, miners, labourers and workmen, and at such salaries as he shall think fit (but subject to such control as aforesaid), and may make all usual and proper contracts and payments for the management and carrying on of the business and works of the company; and such manager shall observe and perform in all respects the covenants and conditions contained in the above recited lease, and in every other lease of any hereditaments and premises to be for the time being employed for the purposes of the company. But such manager shall not, without the previous sanction of the said company, unless there be an urgent necessity for doing so, commence or prosecute any action or proceeding against any person or persons; nor release or compound for any debt or debts amounting to \$ or upwards, which shall be owing to the company and not fully paid; nor on any account without such previous sanction, draw, make, accept, sign or endorse any bill of exchange, promissory note, or other draft or security, in the name or on account of the company, except in the ordinary course of transacting the necessary business of the company; and any manager who shall break this last condition, shall immediately pay to the use of the company twice the amount of the sum for which such bill, note or other draft, or security shall purport to make the company liable as liquidated damages.

12. No partner, except the manager for the time being, shall buy, order, sell, or contract for the purchase or sale of any goods, wares,

merchandise, or articles for the said company, or draw, make, accept, sign, or endorse any bill of exchange, promissory note, draft, or other security, or enter into any other contract for or in behalf or on account of the company (otherwise than by voting as aforesaid), or meddle or interfere (otherwise than as aforesaid) with the goods, effects, or business of the company.

13. Each of the partners for the time being of the company shall, from time to time, pay and discharge all the private and separate debts now or hereafter due or owing from him or her to the company, or to any other person or persons whomsoever, and shall keep indemnified the company and the other members thereof, and the property, estate and effects of the company and members from and against such private and separate debts and all actions, executions, proceedings, costs, damages, and expenses for or on account of the same or relating thereto.

14. The company shall meet at _____ on the _____ in every _____ in every year, or on such other day within _____ days next, before or after such day, as the manager for the time being shall appoint, and that in all cases _____ days' previous notice of each such meeting shall be previously given by such manager by advertisement in some newspaper published and generally circulated within _____, and also by a circular letter to be sent through the post by such manager to every member of the said company, whose address shall be known to or readily discoverable by such manager.

15. On the written requisition of any _____ of the members of the company, an extraordinary meeting of the company shall be convened at not less than _____ notice by means of such advertisement and circular as aforesaid, to be respectively signed, inserted and issued either by such manager, or in case of his refusal or neglect, by the members, or any _____ of them requiring the same; Provided always, that the object of calling such meeting shall be expressed in such advertisement and circular respectively, and that such meeting shall not have any authority or power to bind the company in respect of any matter which shall not fairly come within the object of the meeting, as expressed in such advertisement and circular respectively.

16. Each holder, or the collective holders of one _____th share in the company, shall be entitled to a vote in respect of such share, and

each holder or the collective holders of more than one th share shall be entitled to a vote in respect of each th share so held by such holder or collective holders; and such vote or votes may be given by such holder or collective holders personally or by any member of the company whom he or they may, by writing under his or their hand, authorize to vote on his or their behalf at any particular meeting, or on any particular question at such meeting, such authority being given within the weeks next preceding such meeting, but extending (unless revoked) to any adjournment of such meeting.

17. A special resolution within the meaning of these articles shall mean a resolution passed at an extraordinary meeting of the company by a majority in number, and not less than in value (in respect of shares) of the members voting personally or by proxy as aforesaid at such meeting.

18. All questions relating to the company and its property and business, not hereby expressly required to be determined by a special resolution, may be determined either at a or extraordinary meeting by an ordinary resolution, that is to say, a majority in number of the members voting personally or by proxy at the meeting. In case of an equality of votes on an ordinary resolution, the same shall be deemed to have been negatived.

19. The manager, for the time being, shall attend every and extraordinary meeting, and shall enter true and accurate minutes of all resolutions passed at, and proceedings of, such meeting in a book to be kept for the purpose.

20. All usual and necessary books of account shall be provided at the expense of the company, and kept by the manager for the time being, in which shall be clearly written or entered a just, true, complete and particular account of all sums of money paid and received, and of all debts contracted and sales and purchases made, and of all other matters and things conducive to and proper for manifesting the true state and condition of the affairs of the company, which books, together with all deeds, securities, maps, plans, letters, documents, and vouchers, belonging to the company, shall be kept at the principal office of the company, and be there subject to the free inspection of every member of the company, or his agent or solicitor at all reasonable times, for the purpose of perusing or examining the same, or of taking extracts or copies from or of the same.

21. All bills, notes, receipts, accounts, and securities shall be made and taken by the manager or trustees for the time being in the name of the company, and all bonds, conveyances, securities, and assurances shall be made and executed in the names of the said (trustees), or such other persons as shall be appointed by the company for such purpose.

22. In the meeting which shall take place in or for the of in each year, a general account in writing shall be taken and made by the partners of all sales which shall have been made, and of all the stocks, monies, credits, debts, and liabilities of the company, and of all such other matters as are usually comprehended in annual accounts, of the same nature, or shall be necessary and proper in relation to the business and transactions of the company, and a just valuation and appraisement shall be made and approved by the parties present at such meeting, of all the particulars and matters included in such account which are capable of being appraised, and the materials for such appraisement shall be furnished by the manager for the time being, who shall also distinguish to the best of his ability between the good and bad debts due to the company, and such general account and valuation shall from time to time be entered in a book (to be kept as aforesaid), and signed by the members of the company for the time being, who shall also sign any duplicate thereof, which may be required and tendered to be signed by any of the said members; and the allowance and signature of such account by the majority of the members present at such meeting as lastly aforesaid, or at any adjournment of such meeting (the time and place of such adjourned meeting having been duly notified in manner aforesaid at the least before the happening thereof), shall be binding on all the members of the company, except as to any manifest error to the amount of \$ or upwards which may be discovered within the year following such meeting; Provided always, that no such member shall be entitled to receive any dividends or profits arising from the partnership transactions, unless and until he shall have signed such annual account.

23. It shall be lawful for any partner during his life or, by will, after his decease, with the consent of the other partners expressed by special resolution, to introduce into the company any one person, being of full age, whom he may think proper, and to transfer to him all or any of his shares or share in the company; and also, by will, without such consent, bequeath to any son or sons, being of full age, all or any of the shares or share which such testator shall hold at

his death; Provided always, that nothing herein contained shall authorize the transfer or bequest of less than one entire share to any person.

24. If any partner shall during the continuance of the company become insane, or bankrupt, or suffer a receiving order to be made against him, or enter into any composition or arrangement, statutory or otherwise, for the benefit of his creditors generally, then such partner shall, so far as he is concerned, cease to be a member of the company.

25. Any partner may retire from the company on the day of _____ in any year during the partnership term upon leaving for the manager, or sending to him through the post, at the office for the time being of the company, not less than _____ previously, a notice in writing of his intention to retire.

26. If any partner shall die during the continuance of the company, or so cease as aforesaid to be a member of the company, or retire therefrom, the partnership relation or contract hereby intended to be constituted shall not be determined as between the other members of the company, but shall continue until the end of the partnership term, subject to the covenants, stipulations, and provisions herein contained so far as applicable to such continued partnership; and in such case, if the partner so ceasing to be a member of the company or dying shall not have transferred or bequeathed the whole of his shares or share in the company, the value of the shares or share for the time being held by him shall be ascertained, and after deducting therefrom the amount (if any) which shall be required for the settlement and discharge of the demands of the company against such member, shall be paid out to him, or his committees, assignees, or executors or administrators, out of the capital, assets, and profits of the company.

27. For the purposes of the payment to be made pursuant to the last article, in the case of a partner so dying or ceasing to be a member of the company, or retiring therefrom as aforesaid before the day of _____, then the value of each share held by him for the time being shall be taken to be an aliquot share of the estimated value of the said mines, and premises comprised in the said lease, and of the money-capital contributed by him, for the time being, with interest thereon at the rate of _____ per cent. per annum, to be computed as to the estimated value of the said mines and pre-

mises as from the date of these presents, and as to the said money-capital as from the time at which it shall have been contributed; and in the case of a partner so dying or ceasing to be a member of the company, or retiring therefrom after the day of next, then the value of each share held by him for the time being shall be taken to be an aliquot share of the property and assets of the company as shown by the last preceding annual general account (which account shall for this purpose be binding and conclusive on all persons interested), with interest thereon at the same rate from the date of such account; Provided always that in addition to payment of the value of the shares or share so ascertained as aforesaid and of interest thereon as aforesaid, the person or persons entitled to receive payment of the same shall also be entitled to repayment by the company of all advances made to the company, or undrawn profits left in the business pursuant to paragraph 5 hereof, and interest accrued due thereon.

28. The sum to be paid out under paragraph 26 hereof, shall be paid either immediately, or as soon as conveniently may be, in one aggregate sum, with interest at the rate aforesaid as from such death, cessation of membership, or retirement as aforesaid until actual payment thereof, or (if the surviving or continuing partners shall so determine) by equal instalments to be secured in manner hereinafter mentioned, that is to say, the surviving or continuing partners shall enter into a joint and several bond in a sufficient penalty for securing the amount of the said sum to the person or persons entitled thereto by equal instalments at the respective periods of

 next after the date of such death, cesser of membership or retirement as aforesaid, with interest as from that date for so much of the said sum as shall for the time being remain unpaid at the date of the payment of each instalment, but with power for the surviving or continuing partners or partner at any time to pay off, by way of anticipation, the whole of the instalments or instalment for the time being unpaid of the said sum, with any interest accrued due up to the day of payment, on giving to the person or persons entitled to receive such payment days' notice in writing of their intention so to do.

29. All shares and interest of a partner so dying, ceasing to be a member of the company, or retiring, of and in the good will, property, assets and profits of the company, shall as from the death, cesser of membership, or retirement belong to, and the whole of his liabilities in respect of the business and transactions of the company,

after that date shall be borne by the surviving or continuing partners alone, and all proper and necessary assignments, transfers, and assurances, shall be made and executed by the executors or administrators of the partner so dying as aforesaid, or by the partner so ceasing to be a member of the company, or retiring, or his committees, trustees, or assigns, for effectually vesting his shares or share and interest in the company in the surviving partners and for releasing the surviving partners from all claims and demands of such partner, his executors, administrators, committees, trustees, or assigns as the case may require; and all the surviving partners shall, by bond or otherwise as may reasonably be required, effectually indemnify and thereafter keep indemnified such partner, or his executors, administrators, committees, trustees or assigns, and his and their estates and effects against all actions, proceedings, claims and demands on account of the partnership.

30. If any member of the company, except as aforesaid, shall draw, make, accept, sign or endorse any bill, note, draft, or security on account of the company, shall be attached, seized or taken in execution on account of any private debt or engagement of any member, or if any member shall apply to his own separate use any of such effects, property, or money, it shall be lawful, by a special resolution, to dissolve and put an end to the partnership, and to expel him therefrom, and the share and interest of such member in the partnership shall, at the option of such majority, be either retained by the company, at its value, to be ascertained by valuation as provided in paragraph 27 hereof, and the value of such share or shares shall be applied in the settlement or reduction of the demands of the company against such offending member on his making and executing such assignments, transfers, and assurances as may be necessary for vesting his shares or share and interest in the property and assets of the company in the continuing partners, and for releasing all demands against the company in respect of his partnership therein.

31. It shall be lawful for the members for the time being, by special resolution, either to discontinue and dissolve the said partnership before the expiration of the said term of _____ years (such discontinuance or dissolution not to take effect before the expiration of _____ from the day on which such meeting shall be held), or during the last year of such term, to continue and extend the partnership for any additional term of not more than _____ upon the terms herein contained, and to procure a renewal of any lease or leases which shall then belong to the company; Provided

that no such dissolution or extension of the partnership shall be valid unless the proposal to make the same shall have been notified by such advertisement and circular as aforesaid, at least two weeks prior to the meeting at which the same shall be made.

32. Immediately upon the expiration of the said term of , or of such extended time as aforesaid, or upon other the determination and dissolution of the partnership, a general account in writing shall be made of all the partnership estate, assets, effects, credits, debts, and liabilities, and such estate, assets and credits, shall be immediately realized, sold, and converted into money, and the proceeds, after the full and complete discharge of or provision for all the partnership debts and liabilities, shall be divided among and paid to the members of the company for the time being, or their respective executors, administrators, or assigns, in the several shares and proportions, in which they shall respectively be entitled thereto.

33. (Insert usual arbitration clause), In witness, etc.

BILL OF SALE.

MINERAL CLAIM.

Know all men by these presents, that I
B.C., free miner.

Free Miner's Certificate No.

Issued at 189 for and in consideration of the sum of
dollar (\$) of lawful money, to
in hand paid, the receipt whereof is hereby acknowledged, do by these
presents, bargain, sell, assign and transfer unto

Free Miner's Certificate No.

Issued at 189 , his executors, administrators
and assigns

(Description of Claim.)

situated
located the day of A.D. 189 .
recorded at upon the day of
A.D. 189 , and hereby covenant that ha a

good title to the mineral claim aforesaid, and right to transfer the same.

In witness whereof ha hereunto set hand
and seal this day of A.D. 189 , at
Witness :

(Seal.)

(Seal.)

(Seal.)

ATTESTATION CLAUSE AND CERTIFICATE OF EXECUTION OF DEED BY FOREIGN COMPANY.

In witness whereof the said grantor has caused these presents to be executed and subscribed by its President and Secretary, and its corporate seal to be hereto affixed on the day and year first above written.

(L.S.)

Its President.

Attest :

Secretary.

Signed, sealed and delivered by the said
Company in the presence of
residing at and by occupation

United States of America,
state of

ss.

county of

I hereby certify that personally known
to me, appeared before me, and acknowledged to me that he is the
person whose name is mentioned in the annexed instrument as Secretary
of the Company, and whose name is
subscribed thereto as such Secretary; that he subscribed his name
to the annexed instrument as Secretary of the
Company, and affixed the seal of the said Company to the said instrument,
and that he, the said secretary, was first duly authorized to
subscribe his name, as aforesaid, and to affix the said seal to the said
instrument, and that he knows the contents thereof, and that he and
the said Company executed the same
voluntarily.

ha a

In testimony whereof I have hereunto set my hand this
day of A.D. 189 .

Commissioner for taking affidavits in and
for the Courts of

CERTIFICATE OF EXECUTION OF DEED FOR REGISTRATION
IN BRITISH COLUMBIA.

Province of
County of

To wit :

I hereby certify that _____ personally known to me, appeared before me and acknowledged to me that he is the person whose name is subscribed to the annexed instrument as witness, and after being duly sworn before me he proved to me that the grantor in the said conveyance is personally known to him, the said witness, and that he, the said _____ subscribed his name to the annexed conveyance as grantor, and affixed his seal to the said instrument, and that he knew the contents thereof, and that the said _____ executed the same voluntarily.

And I further certify that the County Court of the County of _____ is a Court of Record within and for said Province of _____ and that the said Court has a seal, and the seal hereto attached is the seal of said Court.

And I further certify that I am the Judge of the said Court, duly qualified and acting, and the foregoing acknowledgment and proof were taken before me as such Judge of said Court this day.

Witness my hand and seal of said Court this day of
189 .

EXCEPTION OF MINES IN CONVEYANCE — SURFACE
OF LAND NOT TO BE DISTURBED.

Excepting and always reserving out of these presents, and the grant and conveyance hereby made unto the said (grantor), his appointees, heirs and assigns, all mines, veins and deposits of _____, and other mines and minerals lying within or under the said piece of land hereby granted and conveyed, or any part or parts thereof re-

spectively, with full liberty, power and authority for the said grantor and for his appointees, heirs and assigns, and his, their or any of their lessees, agents and workmen, and every or any other person or persons by his, their or any of their order or permission, at any time or times, and from time to time, to search for, get, win, mine, take and carry away the same, and sell and convert to his and their own use the said excepted mines, veins, deposits of _____ and other mines and minerals, or any of them, or any parts or part thereof, at pleasure, and to do all things necessary for effectuating all or any of the purposes aforesaid, but without entering upon the surface of the said lands or any part thereof, and so as not to disturb the said surface, or any part thereof, by or in consequence of underground workings.

EXCEPTION OF MINES IN CONVEYANCE OF LAND—
RIGHT TO DISTURB SURFACE, BUT NOT TO TAKE
AWAY SUPPORT.

Except and reserving unto the said (grantor) his heirs and assigns, all and every the mines, veins, strata and deposits _____, unopened as well as opened, in, under or upon the hereditaments hereby granted and assured, with full and free liberty and authority for the said (grantor), his heirs and assigns, and his and their agents, workmen or servants, to search for, work, take and carry away the same for his and their own use and benefit, and to dig, sink, drive, make and use all such shafts, pits, levels, adits, air-grates, water-courses and all other works which may be required for winning and working the said mines and minerals according to the most approved practice, with full power to occasion a subsidence of the surface, if such subsidence should result or take place while working according to such approved practice, and also to appropriate and use any part of the lands hereby granted and assured, either underground or on the surface, as may be proper or necessary, as well for depositing and laying down the said minerals, and placing and heaping the waste, refuse and rubbish which may be worked along with them from time to time, as for washing and cleansing any of the said minerals, and for effectually separating them from all the soil and other substances mixed with them, and also for supplying such mines and works with water, and with good and fresh air, or for freeing the same from water or foul air, for the purposes aforesaid, to erect, make and employ all such fire, steam, water or other engines, buildings, workmen's houses,

shops, crushing mills, sheds, machinery and works which may be proper and reasonable, and which are now or may be hereafter used for similar purposes, and also for full liberty and authority to construct or repair and use any railroads, tramways, or other roads or ways which may be reasonably required for the effectual working and management of the said mines and works, or for the delivery of the said minerals; provided always, that all such minerals which shall have been so produced, shall be taken away from the lands hereby granted and assured within a reasonable period from the time of their production; provided also, that the said (grantor), his heirs and assigns, shall from time to time make compensation to the owners and occupiers for the time being of the said lands and premises hereby granted and assured, in respect of the injuries sustained by them in the prosecution of the mines and works aforesaid, whether such injuries be of a permanent or of a temporary nature; and such compensation shall apply as well to all buildings erected thereon after the day of the date of these presents as previously, and to all new improvements of the surface generally.

EXCEPTION OF MINES WITH RIGHT TO DISTURB SURFACE BY SUBSIDENCE ONLY.

Except and reserving out of the conveyance hereby made, all the mines and minerals whatsoever, unopened as well as opened, in or under the hereditaments hereby assured, with full liberty to search for, win, work and carry away the same, by means of underground workings only and with full liberty to make use of or employ any such underground workings for any purposes whatsoever; provided always that reasonable compensation be made from time to time for all injuries to the surface and buildings thereon, or to either, which may be sustained by the owners or occupiers for the time being of the said hereditaments by reason of the prosecution of the mines and works aforesaid.

EXCEPTION OF MINES IN LEASE, WITH RIGHT TO DAMAGE SURFACE BY SUBSIDENCE ONLY, AND WITHOUT LIABILITY TO PAY COMPENSATION.

Except and reserved out of this demise all mines, seams, beds, veins and deposits of _____, and other mines, minerals, substances and quarries lying under the said demised land, with full power and free liberty to and for the lessor, and all and every, or any person or persons whomsoever claiming, or to claim from or under

him, and his and their lessees, tenants, workmen and others, by his and their authority, at all times henceforth, during the continuance of this demise at his or their pleasure, but without entering upon the surface of the said demised land, except under powers already conferred or agreed to be given in or by any lease, or assurance or agreement already made or subsisting to get, win, carry away, sell and dispose of the said coal and other mines, minerals, mineral substances and quarries, and every or any part thereof respectively, either alone or together, with any and other mines, minerals, mineral substances and quarries within or under any adjacent or other land, and either with or without leaving support to the surface, and whether the surface or any buildings thereon for the time being may or may not be thereby lowered or depressed, or injured in any wise, and without any liability whatever to make compensation for any injury to the surface, or to any buildings thereon for the time being.

RESERVATION OF MINERAL WAYS IN AN ORDINARY LEASE.

Except and reserved at all times during the continuance of this demise unto the said (lessor), his heirs and assigns, full and free liberty and authority to use and appropriate all such pieces or parcels of land as may at any time hereafter be required by the said (lessor), his heirs or assigns, or any other persons whomsoever, for the purpose of forming any railways or other ways for the conveyance of coal or any other minerals, articles or materials whatsoever, or of passengers, and in any manner whatsoever, or which may be reasonably required for the proper use and enjoyment of any such ways, or for the purposes connected therewith, with full liberty and authority to convert such pieces or parcels of land for the purposes aforesaid, and to do all necessary and proper acts for making, repairing and maintaining in proper order and condition any such ways, and for effectually draining and fencing off the same from any of the adjoining lands comprised in this demise. Provided always, that the said (lessor), his heirs and assigns, or other persons aforesaid, shall make all proper and reasonable compensation to the said (lessee), his executors, administrators or assigns, for the injury sustained by him or them in the formation and maintenance of any such ways or works aforesaid, and shall at all times during the said term effectually fence off the same from any of the adjoining lands hereby demised. And also that the said (lessor), his heirs or assigns, shall at all times make all proper abatements and allowances in the amount of the rent hereby reserved in consequence of such ways and works.

WAY-LEAVE, GRANT OF.

This indenture, made, etc., between (grantor) of the one part, and (grantee) of the other part, Witnesseth that in consideration of the rents, covenants and agreements hereinafter mentioned on the part of the said (grantee), his executors, administrators and assigns to be paid and performed, he, the said (grantor), doth by these presents grant and demise unto the said (grantee), his executors, administrators and assigns, full, free and irrevocable license, right and authority for himself and themselves, his and their agents, workmen and servants, to use and employ for the purposes hereinafter mentioned, at all times between the hours of in the morning, and in the evening, all that railway extending in one continued line from to (describe the way), together with full and free liberty for him and them, within the hours aforesaid, to pass and repass along the said line hereinbefore described, with all usual waggons and other carriages, either drawn by horses or drawn or propelled by steam, or other engine, or by any other power or contrivance to convey all such coal and other minerals as shall from time to time be raised by the said (grantee) his executors, administrators or assigns, from and out of all that mine (describe the mine or pit or seams) and to convey all other material, articles, and things which shall be thought necessary or proper for carrying on said mine; and for the purposes aforesaid to use and employ all the fixed engines, rollers, ropes, machinery, buildings and works belonging to the said together with all and singular other privileges, advantages, and appurtenances to the said right of way belonging or appertaining. To have and to hold the said license, right and authority, and all and singular other the premises hereby demised unto the said (grantee), his executors, administrators and assigns from for the full term of years then next ensuing, rendering and paying therefor (insert usual form of reddendum and covenant for payment of rent). And also shall and will at all times during the said term hereby grant, permit, and suffer the said (grantor), his heirs or assigns, and all other persons duly authorized by him or them, also to use and enjoy the said railway for any similar purposes peaceably and quietly, and with as little disturbance and interruption as possible. And shall and will accordingly enter into and adopt all reasonable arrangements which shall from time to time be proposed by the said (grantor), his heirs and assigns, or other persons aforesaid in that behalf, and also shall and will at all times do as little injury as possible to the said railway and the sides, rails, fences and drains thereof, and the buildings, works and other property belonging thereto enjoyed in con-

(grantor)
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nection therewith. And shall also from time to time during the said term, except during the last year thereof, contribute his and their just proportion of all such reasonable costs and expenses as shall be required to, be incurred for the laying of new rails or the necessary repairs, support and order of the said railway hereby authorized to be used and employed as aforesaid, and of all the sides, rails, fences, drains and walls belonging thereto and of so much of the engines, rollers, ropes, buildings, machinery and works, held therewith as shall be used and enjoyed by the said (grantee), his executors, administrators or assigns, in common with any other persons whomsoever. Provided always, and it is hereby agreed and declared that in case, and so often as during the said term the said yearly rent or sum hereby reserved, or any part thereof, shall remain unpaid for the space of days next after any of the said days hereby appointed for the payment thereof, then it shall be lawful for the said (grantor), his heirs and assigns, to distrain upon any part of the said railway hereinbefore described for the same rent and all arrears thereof, and the property of the said (grantee), his executors, administrators or assigns, there found to take and carry away as landlords are authorized to do for rent in arrear, until the said yearly rent, or so much thereof as shall be due, and all costs and expenses occasioned by the non-payment thereof shall be fully satisfied and paid. Provided always, and it is hereby further agreed and declared that in case at any time during the said term the said (grantee), his executors, administrators or assigns shall neglect or refuse to perform any of the covenants and agreements hereinbefore contained, and on his and their part to be respectively observed, then it shall be lawful, upon any such breach as aforesaid, for the said (grantor), his heirs and assigns by notice in writing, and signed by him or them, and delivered to the said grantee, his executors, administrators and assigns, or left at his or their usual or last place of abode, to declare that these presents and the right and liberty hereby granted shall thenceforth determine, and thereupon these presents and the said right and liberty shall forthwith become absolutely void to all intents and purposes whatsoever, except in respect of any prior breach of the covenants, and agreements herein contained. (Insert appropriate covenants for title.) And also shall and will at all times during the said term keep and preserve the said railway, buildings, fixed engines, machinery, rollers, ropes and works hereby authorized to be used and enjoyed in common as aforesaid in good order, repair and condition, and in all respects fit for the purposes of the rights and liberties hereby granted and demised. And also shall and will at all times during the said term pay and discharge all taxes, rates and imposi-

tions whatsoever, to be charged or imposed in respect of the premises hereby demised as aforesaid.

In witness.

SCHEDULE.

FORMS IN CONNECTION WITH THE DOMINION MINING REGULATIONS

For the disposal of Quartz Mining Claims on Dominion Lands in Manitoba and the North-West Territories (including the Provisional District of Yukon). Approved by Order in Council dated 21st March, 1898. [Containing Forms "A" to "X" inclusive, and Schedule of Fees to be charged].

FORM "A."

(21st March, 1898.)

FOR A FULL CLAIM.

Dominion Lands District.

I, A. B., of _____, in the _____ Dominion Lands District, free miner, make oath and say:—

1. I am the holder of Free Miner's Certificate No. _____, dated _____ day of _____, 18____, and issued at _____.

2. On the _____ day of _____, 18____, I located the mineral claim, situated (here describe position of claim as near as possible, giving the name or names of any mineral claim or claims it may join).

3. I have placed posts No. 1 and No. 2 and a discovery post of the legal dimensions on the said claim, with the legal notices on each post.

4. I have written on No. 1 post the following words:—

5. I have written on No. 2 post the following words:—

(If any of the corners are indicated by witness posts the particulars as to such posts to be fully set out).

6. That I have found mineral in place on the said claim.

7. That I have marked the line between No. 1 and No. 2 posts, as required by section 14 of these regulations.

8. That to the best of my knowledge and belief the ground comprised within the boundaries of the said claim is unoccupied by any other person as a mineral claim; that it is not occupied by any building or any land falling within the curtilage of any dwelling house, or any orchard, or any land under cultivation, or any land reserved from entry under the Mining Regulations.

9. That the said claim has not heretofore been staked out by any one in my interest.

FORM "A1."

(21st March, 1898.)

FOR FRACTIONAL CLAIM.

Dominion Lands District.

I, A. B., of _____, in the _____ Dominion Lands District, free miner, make oath and say:—

1. I am the holder of Free Miner's Certificate No. _____, dated _____ day of _____, 18____, and issued at _____.

2. On the _____ day of _____, 18____, I located the fractional mineral claim, situated _____

3. This is a fractional claim bounded on the north by _____, on the south by _____, on the east by _____, and on the west by _____, and is more particularly described on the sketch plan on the back of (or attached to, as the case may be) this declaration.

4. I have placed (here enumerate each of the posts placed on the ground in locating the claim) with the legal notices on each post.

5. I have written on No. 1 post the following words:

6. I have written on No. 2 post the following words:

7. I have written on my post at intersection with the Mineral Claim, the following words:

(The particulars written on each intersection post to be fully set out.)

8. I have found mineral in place on the said fractional claim.

9. I have marked the line between No. 1 and No. 2 posts, as required by section 14 of these regulations.

10. That to the best of my knowledge and belief the ground comprised within the boundaries of the said fractional claim is unoccupied by any person as a mineral claim; that it is not occupied by any building or any land falling within the curtilage of any dwelling house, or any orchard, or any land under cultivation, or any Indian reserve, or other reservation made in the Mining Regulations.

11. That the said claim has not heretofore been staked out by any one in my interest.

FORM "B."

(21st March, 1898.)

RECORD OF A MINERAL CLAIM.

Mineral Claim.

Certificate No.

Located by _____ of _____, from
whom I have this day received the sum of \$5, being the fee prescribed
by the Mining Regulations for recording a mineral claim.

The claim is situated

The direction of the line from No. 1 post to No. 2 post is

The distance in feet is

(If any of the corners are indicated by witness posts the particulars
as to such posts to be fully set out.)

The claim was located on the _____ day of _____, 18 .

Recorded this _____ day of _____, 18 .

Mining Recorder.

FORM "C."

(21st March, 1898.)

APPLICATION FOR A CERTIFICATE OF WORK.

Affidavit.

I, _____ of _____, in the district
of _____, free miner, make oath and say:—

That I have done, or caused to be done, work on the
Mineral Claim, situate at _____ in the
Dominion Lands District, to the value of at least one hundred dol-
lars, since the _____ day of _____, 18 .

The following is a detailed statement of such work:—

(Set out full particulars of the work done in the twelve months
in which such work is required to be done, as shown by section 31.)

Sworn, etc.

FORM "D."

(21st March, 1898.)

CERTIFICATE OF WORK.

(Name of Claim) _____ Mineral Claim.

This is to certify that an affidavit setting out a detailed state-
ment of the work done on the above claim since the _____ day

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of _____, 18____, made by _____ has this day been filed in my office, and in pursuance of the provisions of the Mining Regulations, I do now issue this Certificate of Work in respect of the above claim to _____

This certificate entitles _____ to continue in possession of the said claim for one year, dated from _____

Mining Recorder.

FORM "E."

(21st March, 1898.)

CERTIFICATE IN CASES OF PARTNERSHIP THAT ANNUAL EXPENDITURE MAY, AFTER RECORDING CLAIMS, BE MADE ON ANY ONE OF THE CLAIMS AFFECTED BY SUCH PARTNERSHIP.

No. _____

Department of the Interior,

Agency, _____ 18____.

This is to certify that in accordance with the provisions of clause 31 of the Dominion Mining Regulations (A. B.) of _____, who obtained entry No. _____ for the mining location described as follows: On the _____ day of _____, 18____, and (C. D.) of _____, who obtained entry No. _____ for the mining location described as follows: on the _____ day of _____, 18____, and (E. F.) of _____, who obtained entry No. _____ for the mining location described as follows: on the _____ day of _____, 18____, and (G. H.) of _____, who obtained entry No. _____ for the mining location described as follows: on the _____ day of _____, 18____, having complied with the conditions required by said clause 31, in so far that they have filed a certificate of a partnership entered into at _____, dated the _____ day of _____, 18____, may make the annual expenditure required by each on any one of the mining locations aforementioned.

Mining Recorder.

FORM "F."

(21st March, 1898.)

CERTIFICATE OF IMPROVEMENTS.

Mineral Claim.

This is to certify that _____ of _____, in the _____ Dominion Lands District, free miner's certificate No. _____, has proved to my satisfaction that he has complied with all the provisions of the Dominion Mining Regulations, to entitle him to a certificate of improvements in respect of the _____ Mineral Claim, situated at _____, in the _____ Dominion Lands District, and in pursuance of the provisions of the said regulations I do now issue this certificate of improvements, in respect of the above claim, to

Dated _____

Mining Recorder.

This certificate will become void unless a Crown grant is applied for within three months from its date.

(Form may be altered to suit circumstances.)

FORM "G."

(21st March, 1898.)

NOTICE.

Mineral Claim.

Situate in the _____
Where located _____

Dominion Lands District.

Take notice that I _____ free miner's certificate No. _____, intend, sixty days from the date hereof, to apply to the Mining Recorder for a Certificate of Improvements, for the purpose of obtaining a Crown grant of the above claim.

And further take notice that action, under section No. 43a, must be commenced before the issuance of such Certificate of Improvements.

Dated this _____ day of _____, 18 .

FORM "H."

(21st March, 1898.)

APPLICATION FOR CERTIFICATE OF IMPROVEMENTS.

Applicant's Affidavit.

I, _____ of _____, in the Dominion Lands District, make oath and say:—

1. I, _____, am the recorded holder, and am in undisputed possession of the _____ Mineral Claim, situated at _____, in the _____ Dominion Lands District.

2. I, _____, have done, or caused to be done, work on the said claim in developing a mine to the value of at least five hundred dollars, full (*) particulars whereof are hereto annexed and marked (A).

3. I, _____, found mineral in place within the limits of the said claim.

4. I, _____, had the claim surveyed by _____, who has made three plans of the said claim.

5. I, _____, placed one plan on a conspicuous part of the land embraced in such plan on the _____ day of _____, 18 ____.

6. I, _____, posted a copy of the notice hereunto annexed and marked (B), at the same place as said plan is posted, on the _____ day of _____, 18 __, and another copy in the Mining Recorder's office at _____, on the _____ day of _____, 18 __, which said notice and plan have been posted and have remained posted for at least sixty days concurrently with the publication of the said notice in the nearest local newspaper (to be named).

7. I, _____, inserted a copy of the said notice in the _____, a newspaper published in and circulating in the district, or in the nearest newspaper published in the district in which the claim is situated, where it first appeared on the _____ day of _____, 18 __, and was continuously published for sixty days.

S. I, _____, deposited a copy of the field notes and plan in the Mining Recorder's office at _____, on the _____ day of _____, 18____, and they remained there for reference for sixty days concurrently with the publication of the said notice in the newspaper.

Sworn and subscribed to at _____,
this _____ day of _____, 18____.

*NOTE.—Particulars must be exclusive of all houses and other like improvements.

FORM "I."

(21st March, 1898.)

MINING RECORDER'S CERTIFICATE.

Dominion Lands District.

Mineral Claim.

Date located.

Date recorded.

Sir,—I herewith inclose the following documents relating to your application for a certificate of improvements to the above claim:—

Affidavit of _____, applicant (Form "II.")

Copy of plan of claim

Copy of Surveyor's field-notes

And I hereby certify that _____ has published a notice of his intention to apply for a certificate of improvements for sixty days in the _____ newspaper from the _____ day of _____, 18____. That during the above period a notice in accordance with section 43, sub-section (d), has been posted, and a copy of the field notes and plan of the said claim deposited for reference in my office, and that no notice of any action having been commenced against the issuance of a certificate of improvements to the said claim has been filed in this office up to this date.

The recorded owner of the said claim at this date is

Dated _____, 18____.

Mining Recorder.

FORM "J."

(21st March, 1898.)

LEASE OF MILL-SITE.

This indenture, made the _____ day of _____, 18____, between _____, the Minister of the Interior (hereinafter called the lessor), of the one part, and _____ of _____, in the _____ Dominion Lands District, free miner (hereinafter called the lessee), of the other part, witnesseth that in exercise of the powers vested in him by the Dominion Mining Regulations, he, the said lessor, doth hereby demise unto the said lessee, his executors, administrators, and assigns, all that
(describe the mill-site)

for the term of one year from the date hereof, subject to the provisions and conditions of the Dominion Mining Regulations relating to mill-sites.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, sealed, and delivered

FORM "K."

(21st March, 1898.)

MILL-SITE.

Affidavit of Applicant Prior to Crown Grant.

I, _____ of _____, in the _____ Dominion Lands District, free miner, make oath and say:—

1. I am the lawful holder of the mill-site mentioned in indenture of lease dated and made between _____

2. During the year mentioned in such lease as the term thereof, I put or constructed works or machinery for mining or milling purposes, on the said mill-site, of the value of at least five hundred dollars.

FORM "L."

(21st March, 1898.)

MILL-SITE.

Certificate of Improvements.

This is to certify that _____ has put or constructed works or machinery, for mining or milling purposes, to the value of at least five hundred dollars, on the mill-site described in and demised by indenture dated the _____ day of _____ 18 , and made between _____ during the existence of such lease.

Mining Recorder.

FORM "M."

(21st March, 1898.)

MILL-SITE.

Application for Crown Grant.

To the Mining Recorder:

Sir,—I inclose herewith the sum of _____ dollars and the undermentioned documents:

Lease of mill-site.

Plan of mill-site.

Surveyor's field-notes.

Certificate of improvements.

Affidavit of applicant.

And I now apply for a Crown grant of the mill-site demised by the above-mentioned lease.

FORM "N."

(21st March, 1898.)

TUNNEL OR DRAIN LICENSE.

To all whom it may concern:—

Take notice that _____, a free miner and the owner of _____, having given security for the amount of _____ for any damage he may do, has this day obtained a license from me to run a tunnel (or drain) from _____ to his said claim (or mine).

The said license is granted on these express conditions:—
(set out conditions, if any)

Dated _____

Mining Recorder.

SCHEDULE OF FEES TO BE CHARGED.

(21st March, 1898.)

For a free miner's certificate (for each year).....	\$ 10 00
For a free miner's certificate to a joint stock company having a nominal capital of \$100,000 or less (for each year)	50 00
For a free miner's certificate to a joint stock company having a nominal capital exceeding \$100,000 (for each year) ..	100 00
Every substituted certificate	2 00
Recording every claim	5 00
Recording every certificate of work	2 50
Recording any other record required to be made in the "Record Book"	2 50
Recording every abandonment, including the memorandum to be written on the record	2 50
For any other record made in the "Record of Abandonments"	2 50
For recording every affidavit, where the same does not exceed three folios of 100 words	2 50
For every folio over three, 30 cents per folio	
The above rate shall be charged for all records made in the "Record of Affidavits"	
For all records made in the "Record of Conveyances" where the same do not exceed three folios	2 50
For every folio over three, a further charge of 30 cents per folio	
For all copies or extracts from any record in any of the above named books, where such copy or extract shall not exceed three folios, per copy	2 50
Where such copies or extracts exceed three folios, 30 cents per folio for every folio over three	
For filing any document	25
For a Crown Grant	5 00
For a certificate of Partnership (Form "E")	2 50

FORM H.—APPLICATION FOR GRANT FOR PLACER MINING, AND AFFIDAVIT OF APPLICANT.

I (or we) _____ of _____ hereby apply, under the Yukon Placer Mining Regulations, for a grant of a claim for placer mining as defined in the said regulations, in (here describe locality) _____ and I (or we) solemnly swear:—

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Recorder.

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site demised by

and the owner of
license from me
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ditions:—

Recorder.

1. That from indications I (or we) have observed on the claim applied for, I (or we) have reason to believe that there is therein a deposit of gold.

2. That I (or we) am (or are) to the best of my (or our) knowledge and belief the first to observe such indications, or:—

3. That the said claim was previously granted to (here name the last grantee) but has remained unworked by the said grantee for not less than

4. That I (or we) am (or are) unaware that the land is other than vacant Dominion lands.

5. That I (or we) did on the day of mark out on the ground, in accordance in every particular with the provisions of the mining regulations for the Yukon District, the claim for which I (or we) make this application, and in so doing I (or we) did not encroach on any other claim or mining location previously laid out by any other person.

6. That the length of the said claim, as nearly as I (or we) could measure is feet, and that the description of this date hereto attached, signed by me (or us) sets (or set) forth in detail, to the best of my (or our) knowledge and ability, its position.

7. That I (or we) make this application in good faith, to acquire the claim for the sole purpose of mining to be prosecuted by myself (or us) or by myself and associates, or by me (or our) assigns.

Sworn before me
at
this day
of 18 } (Signature)

FORM I.—GRANT FOR PLACER MINING.

Department of the Interior,

Agency

18

In consideration of the payment of the fee of fifteen dollars prescribed by clause 28 of the mining regulations for the Yukon District, by (A. B.) of accompanying his (or their) application No. dated 18 , for a mining claim in (here insert description of locality).

The Minister of the Interior hereby grants to the said (A. B.) for the term of one year from the date hereof the exclusive right of entry upon the claim (here describe in detail the claim granted) for the miner-like working thereof, and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom, upon which, however, the royalty prescribed by the regulations shall be paid.

The said (A. B.) shall be entitled to the use of so much of the water naturally flowing through or past his (or their) claim, and not already lawfully appropriated, as shall be necessary for the due working thereof, and to drain his (or their) claim, free of charge.

This grant does not convey to the said (A. B.) any right of ownership in the soil covered by the said claim, and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (A. B.) or his (or their) associates.

The rights hereby granted are those laid down in the aforesaid mining regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Mining Recorder.

FORM J.—CERTIFICATE OF THE ASSIGNMENT OF A PLACER MINING CLAIM.

No.

Department of the Interior,
Agency

18

This is to certify that (B. C.) of 18 ,
has (or have) filed an assignment in due form dated 18 ,
and accompanied by a registration fee of two dollars, of the grant
to (A. B.) of the
right to mine in (here insert description of claim)
for one year from the 18

This certificate entitles the said (B. C.)
to all the rights and privileges of the said (A. B.)

in respect to the claim assigned, that is to say, to the exclusive right of entry upon the said claim for the miner-like working thereof and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom (upon which, however, the royalty prescribed by the regulations shall be paid), for the remaining portion of the year for which the said claim was granted to the said (A. B.) that is to say, until the day of 18

The said (B. C.) shall be entitled to the use of so much of the water naturally flowing through or past his (or their) claim and not already lawfully appropriated, as shall be necessary for the due working thereof and to drain his claim, free of charge.

This grant does not convey to the said (B. C.) any right of ownership in the soil covered by the said claim, and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (B. C.) or his (or their) associates.

The rights hereby granted are those laid down in the Yukon Placer Mining Regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Mining Recorder.

SCHEDULE OF FORMS TO REGULATIONS GOVERNING PLACER MINING ON THE NORTH SASKATCHEWAN RIVER IN N.W.T.

"A"

FREE MINER'S CERTIFICATE.

This is to certify that _____ of _____ has paid me this day the sum of one dollar, and is entitled to all rights and privileges of a free miner provided for in section 1 of the regulations governing placer mining along the North Saskatchewan River in the North-West Territories.

Agent of Dominion Lands

FORM H.—APPLICATION FOR GRANT FOR PLACER MINING AND AFFIDAVIT OF APPLICANT.

I (or we) of hereby apply, under the Dominion Mining Regulations, for a grant of a claim for placer mining as defined in the said regulations, in

(Here describe locality.)

and I (or we) solemnly swear:—

1. That I (or we) have discovered therein a deposit of (here name the metal or mineral.

2. That the said claim was previously granted to (here name the last grantee), but has remained unworked by the said grantee for not less than

3. That I (or we) am (or are) unaware that the land is other than vacant Dominion Land.

4. That I (or we) did on the day of mark out on the ground, in accordance in every particular with the provisions of clause of the said mining regulations, the claim for which I (or we) make this application, and that in so doing I (or we) did not encroach on any other claim or mining location previously laid out by any other person.

5. That the said claim contains, as nearly as I (or we) could measure or estimate, an area of square feet, and that the description (and sketch if any) of this date hereto attached, signed by me (or us), sets (or set) forth in detail, to the best of my (or our) knowledge and ability, its position, form and dimensions.

6. That I (or we) make this application in good faith, to acquire the claim for the sole purpose of mining, to be prosecuted by myself (or us), or by myself and associates, or by my (or our) assigns.

Sworn before me at
this
day of

}

(Signature.)

FORM I.—GRANT FOR PLACER MINING.

No.

Department of the Interior,
Dominion Lands Office,
Agency, 18 .

In consideration of the payment of five dollars, being the fee required by the provisions of the Dominion Mining Regulations, clause three, by (A. B.) of , accompanying his (or their) application No. , dated 18 , for a mining claim in (here insert description of locality.)

The Minister of the Interior hereby grants to the said (A. B.) , for the term of one year from the date hereof, the exclusive right of entry upon the claim (here describe in detail the claim granted) for the miner-like working thereof and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom.

The said (A. B.) shall be entitled to the use of so much of the water naturally flowing through or past his (or their) claim, and not already lawfully appropriated, as shall be necessary for the due working thereof, and to drain his (or their) claim free of charge.

This grant does not convey to the said (A. B.) any surface rights in the said claim, or any right of ownership in the soil covered by the said claim; and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (A. B.) or his (or their) associates.

The rights hereby granted are those laid down in the aforesaid mining regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Mining Recorder

FORM J.—CERTIFICATE OF THE ASSIGNMENT OF A
PLACER MINING CLAIM.

No.

Department of the Interior,
Dominion Lands Office,
Agency, 18 .

This is to certify that (B. C.) of
has (or have) filed an assignment in due form dated
18 , and accompanied by a registration fee of two dollars, of the
grant to (A. B.) of
of the right to mine in (insert description of
claim) for one year from the 18 .

This certificate entitles the said (B. C.)
to all the rights and privileges of the said (A. B.)
in respect of the claim assigned, that is to say, to the exclusive right
of entry upon the said claim for the miner-like working thereof and
the construction of a residence thereon, and the exclusive right to
all the proceeds realized therefrom, for the remaining portion of the
year for which the said claim was granted to the said
(A. B.) , that is to say, until the day
of 18 .

The said (B. C.) shall be en-
titled to the use of so much of the water naturally flowing through
or past his (or their) claim and not already lawfully appropriated, as
shall be necessary for the due working thereof, and to drain the claim
free of charge.

This grant does not convey to the said (B. C.)
any surface rights in the said claim, or any right
of ownership in the soil covered by the said claim; and the said grant
shall lapse and be forfeited unless the claim is continuously, and in
good faith, worked by the said (B. C.)
or his (or their) associates.

The rights hereby granted are those laid down in the Dominion
Mining Regulations, and no more, and are subject to all the pro-
visions of the said regulations, whether the same are expressed herein
or not.

Agent of Dominion Lands.

NOTE.—The wording may be changed if the applicant has ac-
quired the surface rights.

FORM G.—CERTIFICATE OF THE ASSIGNMENT OF A MINING LOCATION.

Department of the Interior,
Dominion Lands Office,
Agency, 18 .

This is to certify that (B. C.) of has (or have) filed an assignment in due form, dated 18 , and accompanied by a registration fee of two dollars, of the right of (A. B.) of to purchase the mining location in (here insert general description of locality) applied for by the said (A. B.) on the 18 .

This certificate entitles the said (B. C.) or his (or their) legal representatives or assigns, to all the rights and privileges of the said (A. B.), in respect of the claim assigned and hereinafter described; that is to say, to enter into possession of the said mining location, and during the term of years from the date of the receipt No. granted to the said (A. B.), dated the day of , 18 , to take therefrom and dispose of any mineral deposit contained within its boundaries, and, on due compliance at any time within that period with the several requirements in that behalf of the Dominion Mining Regulations, entitle him or them to purchase the said location, which, provisionally, and until survey thereof, may be known and described as follows:—

If the said (B. C.) or his (or their) legal representatives or assigns, fail to comply as aforesaid with the conditions that would entitle him or them to purchase, within year of the date of the receipt granted to (A. B.) and now deposited with me, or having so complied, do not within that time make payment in full for the land, and also pay the sum of fifty dollars prescribed in the said regulations for the survey of the location, then the right to purchase shall lapse, and the mining location shall revert to the Crown, to be otherwise disposed of, as may be directed by the Minister of the Interior.

Agent of Dominion Lands.

FORM H.—APPLICATION FOR GRANT FOR PLACER MINING AND AFFIDAVIT OF APPLICANT.

I (or we) of hereby apply, under the Dominion Mining Regulations, for a grant of a claim for placer mining as defined in the said regulations, in

(here describe locality)

and I (or we) solemnly swear:—

1. That I (or we) have discovered therein a deposit of (here name the metal or mineral).

2. That I (or we) am (or are) to the best of my (or our) knowledge and belief, the first discoverer (or discoverers) of the said deposit; or—

3. That the said claim was previously granted to (here name the last grantee), but has remained unworked by the said grantee for not less than

4. That I (or we) am (or are) unaware that the land is other than vacant Dominion land.

5. That I (or we) did, on the day of mark out on the ground, in accordance in every particular with the provisions of sub-clause (e) of clause eighteen of the said mining regulations, the claim for which I (or we) make this application, and that in so doing I (or we) did not encroach on any other claim or mining location previously laid out by any other person.

6. That the said claim contains, as nearly as I (or we) could measure or estimate, an area of square feet, and that the description (and sketch, if any) of this date hereto attached, signed by me (or us), sets (or set) forth in detail, to the best of my (or our) knowledge and ability, its position, form and dimensions.

7. That I (or we) make this application in good faith, to acquire the claim for the sole purpose of mining, to be prosecuted by myself (or us), or by myself and associates, or by my (or our) assigns.

Sworn before me at

this day of

18 .

(Signature)

FORM I.—GRANT FOR PLACER MINING.

No.

Department of the Interior,
 Dominion Lands Office,
 Agency, 18 .

In consideration of the payment of five dollars, being the fee required by the provisions of the Dominion Mining Regulations, clauses four and twenty, by (A. B.) of , accompanying his (or their) application No. , dated , 18 , for a mining claim in (here insert description of locality).

The Minister of the Interior hereby grants to the said (A. B.) , for the term of one year from the date hereof, the exclusive right of entry upon the claim (here describe in detail the claim granted) for the miner-like working thereof and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom.

The said (A. B.) shall be entitled to the use of so much of the water naturally flowing through or past his (or their) claim, and not already lawfully appropriated, as shall be necessary for the due working thereof, and to drain his (or their) claim, free of charge.

This grant does not convey to the said (A. B.) any surface rights in the said claim, or any right of ownership in the soil covered by the said claim; and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (A. B.) or his (or their) associates.

The rights hereby granted are those laid down in the aforesaid mining regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Agent of Dominion Lands.

FORM J.—CERTIFICATE OF THE ASSIGNMENT OF A PLACER MINING CLAIM.

No.

Department of the Interior,
 Dominion Lands Office,
 Agency, 18.

The said (B. C.) shall be entitled to the use of so much of the water naturally flowing through or past his (or their) claim and not already lawfully appropriated, as shall be necessary for the due working thereof, and to drain the claim free of charge.

This grant does not convey to the said (B. C.) any surface rights in the said claim, or any right of ownership in the soil covered by the said claim; and the said grant shall lapse and be forfeited unless the claim is continuously, and in good faith, worked by the said (B. C.) or his (or their) associates.

This is to certify that (B.C.) of has (or have) filed an assignment in due form dated 18 , and accompanied by a registration fee of two dollars, of the grant to (A. B.) of of the right to mine in (insert description of claim) for one year from the 18 .

This certificate entitles the said (B. C.) to all the rights and privileges of the said (A. B.) in respect of the claim assigned, that is to say, to the exclusive right of entry upon the said claim for the miner-like working thereof and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom, for the remaining portion of the year for which the said claim was granted to the said (A. B.) , that is to say, until the day of 18 .

The rights hereby granted are those laid down in the Dominion Mining Regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Agent of Dominion Lands.

FORM K.—GRANT TO A BED-ROCK FLUME COMPANY

No.

Department of the Interior,
Dominion Lands Office,
Agency, 18 .

In consideration of the payment of a deposit of one hundred dollars, required by clause thirty-four of the Dominion Mining Regulations to be made with the application of a bed-rock flume company, and of the further sum of ten dollars, being the fee for registration of this grant required by clause thirty-nine of the said regulations,—

The Minister of the Interior hereby grants to (names of members of company) forming together a bed-rock flume company, known as the (title of company) the following rights and privileges, that is to say:—

(a) The rights of way through and entry upon any new and unworked river, creek, gulch or ravine, and the exclusive right to locate and work a strip of ground one hundred feet wide and two hundred feet long in the bed thereof, to each individual of the company;

(b) The rights of way through and entry upon any river, creek, gulch or ravine, worked by miners for any period longer than two years prior to such entry, and already wholly or partially abandoned, and the exclusive right to stake out and work both the unworked and abandoned portions thereof, one hundred feet in width, and one-quarter of a mile in length for each individual of the company;

(c) The rights of entry through and entry upon all claims which at the time of the notice of application, are in good faith being worked, for the purpose of cutting a channel and laying their flume therein, with such reasonable space for constructing, maintaining and repairing the flume as may be necessary;

(d) The use of so much of the unappropriated water of the stream on which they may be located, and of other adjacent streams, as may be necessary for the use of their flumes, hydraulic power and machinery to carry on their operations, and the right of way for ditches and flumes to convey the necessary water to their works, subject to the payment of any damage which may be done to other parties by running such ditch or flume through or over their ground;

Provided, that the rights herein granted shall apply only to such claims and streams as are here specified: (insert description of claims and streams) and such other claims and streams as may, after due notice and application, be subsequently added to the above list by the Minister of the Interior, under the hand of the local agent;

Provided also, that the said company shall pay to the local agent, in advance, an annual rent of ten dollars for each quarter of a mile of right of way legally held by them;

Provided further, that this grant is subject to all the provisions of the Dominion Mining Regulations in that behalf, whether the same are expressed herein or not.

This grant shall cease and determine at the expiration of years from the date hereof.

Agent of Dominion Lands.

FORM L.—GRANT FOR DRAINAGE.

No

Department of the Interior,
Dominion Lands Office,
Agency, 18 .

In consideration of the payment of a deposit of twenty-five dollars, required by clause forty-three of the Dominion Mining Regulations, to be made with the application for a grant of right of way to construct drains, and of the further sum of dollars, being the fee for the registration of this grant required by clause forty-four of the said regulations.

The Minister of the Interior hereby grants to (name or names of grantee or grantees) the right to run a drain or tunnel for drainage purposes through the occupied mining lands here specified: (here describe mining lands)

and further, for a term of from the date hereof, exclusive rights of way through and entry upon the following mining grounds:

(here insert description) for the purpose of constructing a drain or drains for the drainage thereof; and the right to charge the following tolls for the use thereof (insert tariff of tolls):

Provided, that the grantee (or grantees) shall construct such drain or drains of sufficient size to meet all requirements within from the date hereof, and keep the same in thorough working order and repair, and free from all obstructions; and shall, within a reasonable time, construct proper tap drains from or into any adjacent claims, upon being requested by the owners thereof, and in default thereof shall permit such parties themselves to make them, in which case such parties shall only be chargeable with one-half the rates of drainage-toll herein authorized:

Provided also, that the said grantee (or grantees) shall compensate the owners of lands or holders of claims entered upon by for any damage they may sustain by the construction of such tunnel or drain:

Provided further, that the said grantee (or grantees) shall pay to the local agent, in advance, an annual rent of ten dollars for each quarter of a mile of right of way legally held by

Provided further, that this grant is subject to all the provisions of the Dominion Mining Regulations in that behalf, whether the same are expressed herein or not.

Agent of Dominion Lands.

FORM M.—NOTICE OF APPLICATION TO USE AND DIVERT WATER.

Notice is hereby given, in pursuance of the provisions of the Dominion Mining Regulations, that I (or we) of _____ at the expiration of twenty days from the date hereof, intend to apply to the Minister of the Interior of Canada, for authority to take, carry away, and divert to my (or our) mining claim or from its natural channel, _____ inches of the unentered and unappropriated water of the (stream or lake) known as _____ for _____ purposes, during the term of _____ years from the date of entry, with the object of _____

Such diversion will be made at a point situate on the _____ end or side of the said (stream or lake), marked on the ground by a conspicuous post; and it is intended that such water shall be carried in and through a (ditch, or flume, or both), in a _____ direction over the lands of _____

as indicated by like conspicuous posts planted about every quarter of a mile along the proposed location (of the ditch, or flume, or both).

(Signed)

Dated the _____ day of _____, 18 ____
at _____

Post Office Address.

FORM N.—GRANT OF RIGHT TO DIVERT WATER AND CONSTRUCT DITCHES.

Department of the Interior,
Dominion Lands Office,
Agency, _____ 18 ____

In consideration of the payment of a deposit of twenty-five dollars, required by clause forty-seven of the Dominion Mining Regulations, to be made with the application for the right to divert water and construct ditches:

The Minister of the Interior hereby grants to _____ (A. B.)
for the term of _____ years from the date hereof,
the right to divert and use the water from _____ (specify stream
or lake) to the extent of _____ inches, and no more,

to be distributed as follows: (describe locality of distribution)
together with the right to charge the following rates for the use of said water: (insert rates to be charged)
and the rights of way through and entry upon the following mining grounds (insert description)
for the purpose of constructing ditches and flumes to convey such water, provided such ditches and flumes are constructed and in working order within from the date hereof:

Provided, that this grant shall be deemed to be appurtenant to mining claim No. , and shall cease and determine whenever the said claim shall have been worked out or abandoned, or the occasion for the use of such water upon the said claim shall have permanently ceased:

Provided also, that this grant is subject to all the provisions of the Dominion Mining Regulations in that behalf, whether the same are expressed herein or not.

Agent of Dominion Lands.

FORM M.

Notice of Application for Right to Divert Water.

Notice is hereby given, in pursuance of the provisions of the regulations for the disposal of Dominion lands within the railway belt in the Province of British Columbia, that I, of , at the expiration of 20 days from the date hereof, intend to apply to the local agent of Dominion lands at in the Province of British Columbia, for authority to take, carry away and divert to my (farm or mining claim) from its natural channel inches of the unentered and unappropriated water of the (stream or lake) known as for purposes during the term of years from the date of record with the object of irrigating (or sluicing) my said (farm or mining claim); such diversion will be made at a point situated on the (north, east, south or west, end or side) of the said (stream or lake) marked on the ground by a conspicuous post, and it is intended that such water shall be carried in and through a (ditch or flume, or both) in a direction over the lands of , as indicated by like posts planted, where practicable, every quarter of a mile along the proposed line of the (ditch or flume, or both).

(Signature).

Dated this day of , 18 , at

FORM N.

Affidavit in support of Application for Right to Divert Water.

Province of British Columbia, }
To Wit:

I, of , make oath and say:—

1st. That the document hereunto annexed and marked with the letter "A" is a true copy of a notice given by me , in pursuance of the provisions of the regulations for the disposal of the Dominion lands within the railway belt in the Province of British Columbia, and posted up by me on the day of the date thereof at the point of diversion therein named.

2nd. That on the day of , A.D. 18 , I also posted up a like copy of such notice in a conspicuous place on the lands of each of the following persons, viz.:

3rd. That the lands of the said several persons named in the last above paragraph, and of no others, will be affected by the proposed division in the said notice mentioned.

4th. That I am lawfully entitled to hold land under the said regulations, and I am lawfully occupying (and *bona fide* cultivating or working, as the case may be) the (land or mineral claim) to which the said water is intended to be diverted.

5th. That I have planted posts in accordance with the terms of, and along the proposed line of , as indicated in the said notice, and I believe that I have performed all conditions precedent necessary to entitle me to a record of the water privilege in the notice mentioned or referred to.

Sworn before me, this day }
of A.D. 18 , at } (Signature).
in the said Province.

Local Agent.

FORM O.

Grant of the Right to Divert Water.

To all whom it may concern—GREETING:

Know ye, that , of , having complied with the provisions of the regulations for the disposal of Do-

minion lands within the railway belt in the Province of British Columbia, as appears by affidavit of himself, with notice annexed filed with the undersigned on the day of 18 , is hereby authorized to divert for his own use, for a period of years from the date hereof inches of unrecorded and unappropriated water of , or so much of that quantity as may be lawfully diverted and used by him under and in accordance with the provisions of the said regulations, and the said is entitled to all the rights conferred by the said regulations upon the recorded owner of a water privilege.

Given the day of 18 , at
in the Province of British Columbia.

Local Agent.

SCHEDULE TO CONSOLIDATED MINING REGULATIONS RELATING TO INDIAN LANDS.

FORM A.—APPLICATION AND AFFIDAVIT OF DISCOVERER OF QUARTZ MINE.

I, (A. B.) of hereby
apply, under the Indian Lands Mining Regulations for a mining lo-
cation in (here give general location
of premises) for the purpose of mining for
(here name the metal or mineral), and I hereby
solemnly swear:—

1. That I have discovered therein a deposit of
(here name the metal or mineral).
2. That I am to the best of my knowledge and belief the first
discoverer of the said deposit.
3. That I am unaware that the land is other than vacant In-
dian land.
4. That I did, on the day of ,
mark out on the ground, in accordance in every particular with the
provisions of sub-section (a) of section 4 of the said Mining Regula-
tions, the location for which I make this application, and that in so
doing I did not encroach on any mining location previously laid out
by any other person.
5. That the said mining location contains, as nearly as I could
measure or estimate, an area of acres, and that

the description (and sketch, if any), of this date, hereto attached, signed by me, set forth in detail to the best of my knowledge and ability its position, form and dimensions.

6. That I make this application in good faith to acquire the land for the sole purpose of mining to be prosecuted by myself, or by myself and associates, or by my assigns.

Sworn before me at }
this day of } Signature.

FORM B.—RECEIPT FOR FEE PAID BY APPLICANT FOR MINING LOCATION.

No. .

Department of Indian Affairs,
Office of the Indian Agency at , 18

Received from (A. B.) of ,
five dollars, being the fee required by sub-section (b) of section 4 of
the Indian Lands Mining Regulations, accompanying his applica-
tion No. , dated , 18 , for a mining location
in (insert general description of locality).

This receipt authorizes the said (A. B.)
his legal representatives or assigns, to enter into possession of the
said mining location, and, during the term of one year from the date
of this receipt, to take therefrom and dispose of any mineral deposit
contained within its boundaries, and, on due compliance at any time
within that period with the several requirements in that behalf of
the said mining regulations, entitles him or them to purchase the
said location which, provisionally, and until survey thereof, may be
made known and described as follows: (insert description in detail).

If the said (A. B.) or his legal represen-
tatives or assigns, fail to comply, as aforesaid, with the conditions
that would entitle him or them to purchase within one year from
this date, or, having so complied, do not within that time make pay-
ment in full for the land, and also pay the sum of fifty dollars pre-
scribed in the said regulations for the survey of the location, then
the right to purchase shall lapse and the mining location shall revert
to the Crown, to be otherwise disposed of as may be directed by the
Superintendent General of Indian Affairs.

Indian Agent.

FORM C.—RECEIPT FOR FEE ON EXTENSION OF TIME FOR PURCHASE OF A MINING LOCATION.

No. .

Department of Indian Affairs,
Office of the Indian Agency at , 18 .

Received from (A. B.) of , five dollars, being the fee required by section eight of the Indian Lands Mining Regulations, accompanying his application No. , dated , 18 , for the extension of the time within which he may purchase the mining location described as follows (insert description in detail) for which he obtained an entry No. on the , 18 .

This receipt authorizes the said (A. B.) his legal representatives or assigns, to continue in possession of the said mining location, and during the term of one year from the , 18 , to take therefrom and dispose of any mineral deposit contained within its boundaries, and, on due compliance at any time within that period with the several requirements in that behalf of the said mining regulations, entitles him or them to purchase the said location which, provisionally, and until survey thereof, may be known and described as above.

If the said (A. B.) or his legal representatives or assigns, fail to comply, as aforesaid, with the conditions that would entitle him or them to purchase within one year from this date, or having so complied, do not within that time make payment in full for the land, and also pay the sum of fifty dollars prescribed in the said regulations for the survey of the location, then the right to purchase shall lapse, and the mining location shall revert to the Crown, to be otherwise disposed of as may be directed by the Superintendent General of Indian Affairs.

Indian Agent.

FORM D.—PATENT OF A MINING LOCATION.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith—To all to whom these presents shall come, Greeting:

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Agent.

This is to certify that (B. C.) of _____, has filed an assignment in due form, dated _____, 18 ____, and

accompanied by a registration fee of two dollars, of the right of (A. B.) of , to purchase the mining location in (here insert general description of locality) applied for by the said (A. B.) on the , 18 .

This certificate entitles the said (B. C.) or his legal representatives or assigns, to all the rights and privileges of the said (A. B.) in respect of the claim assigned and hereinafter described; that is to say, to enter into possession of the said mining location, and during the term of one year from the date of the receipt No. , granted to the said (A. B.) dated the day of , 18 , to take therefrom and dispose of any mineral deposit contained within its boundaries, and on due compliance at any time within that period with the several requirements in that behalf of the said mining regulations, entitles him or them to purchase the said location, which, provisionally, and until survey thereof, may be known and described as follows: (insert description in detail).

If the said (B. C.) or his legal representatives or assigns, fail to comply as aforesaid with the conditions that would entitle them to purchase within one year of the date of the receipt granted to (A. B.), and now deposited with me, or having so complied, do not within that time make payment in full for the land, and also pay the sum of fifty dollars prescribed in the said regulations for the survey of the location, then the right to purchase shall lapse, and the mining location shall revert to the Crown, to be otherwise disposed of as may be directed by the Superintendent General of Indian Affairs.

Indian Agent.

FORM F.—APPLICATION FOR GRANT FOR PLACER MINING AND
AFFIDAVIT OF APPLICANT.

I, (A.B.) of , hereby apply, under the Indian Lands Mining Regulations, for a grant of a claim for placer mining, as defined in the said regulations, in (here describe locality) and I solemnly swear:

1. That I have discovered therein a deposit of (here name the metal or mineral).

2. That I am, to the best of my knowledge and belief, the first discoverer of the said deposit; or

(2.) That the said claim was previously granted to (here name the last grantee), but has remained unworked by the said grantee for not less than

3. That I am unaware that the land is other than vacant Indian land.

4. That I did, on the _____ day of _____, mark out on the ground, in accordance, in every particular, with the provisions of sub-section (a) of section 4 of the said mining regulations, the claim for which I make this application, and that in so doing I did not encroach on any other claim or mining location previously laid out by any other person.

5. That the said claim contains, as nearly as I could measure or estimate, an area of _____ square feet, and that the description (and sketch, if any,) of this date hereto attached, signed by me, set forth in detail, to the best of my knowledge and ability, its position, form and dimensions.

6. That I make this application in good faith to acquire the claim for the sole purpose of mining to be prosecuted by myself, or by myself and associates, or by my assigns.

Sworn before me at

this

day of

18

} Signature.

FORM G.—GRANT FOR PLACER MINING.

Department of Indian Affairs,

Office of the Indian Agency at _____, 18__.

In consideration of the payment of five dollars, being the fee required by the provisions of the Indian Lands Mining Regulations, sections four and twenty, by (A. B.), of _____, accompanying his application No. _____ dated _____, for a mining claim in (here insert description of locality);

The Superintendent General of Indian Affairs hereby grants to the said (A. B.) _____, for the term of one year from the date hereof, the exclusive right of entry upon the claim (here describe in detail the claim granted) _____ for the miner-like working thereof, and the construction of a residence thereon, and the exclusive right to all the proceeds realized therefrom.

The said (A. B.) _____ shall be entitled to the use of so much of the water naturally flowing through or past his claim, and not already lawfully appropriated, as shall be necessary for the due working thereof, and to drain his claim, free of charge.

This grant does not convey to the said (A. B.) _____ any surface rights in the said claim, or any right of ownership in the

soil covered by the said claim; and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (A. B.) or his associates.

The rights hereby granted are those laid down in the aforesaid mining regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed or not.

Indian Agent.

FORM H.—CERTIFICATE OF THE ASSIGNMENT OF A PLACER MINING CLAIM.

No. .

Department of Indian Affairs,
Office of the Indian Agency at , 18 .

This is to certify that (B. C.) of , has filed an assignment in due form, dated , 18 , and accompanied by a registration fee of two dollars, of the grant to (A. B.) of , of the right to mine in (insert description of claim) for one year from the , 18 .

This grant does not convey to the said (B. C.) any surface rights in the said claim, or any right of ownership in the soil covered by the said claim; and the said grant shall lapse and be forfeited unless the claim is continuously and in good faith worked by the said (B. C.) or his associates.

The rights hereby granted are those laid down in the aforesaid mining regulations, and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.

Indian Agent.

FORM I.—GRANT TO A BED-ROCK FLUME COMPANY.

Department of Indian Affairs,
Office of the Indian Agency at , 18 .

In consideration of the payment of a deposit of one hundred dollars, required by section thirty-seven of the Indian Lands Mining Regulations to be made with the application of a bed-rock flume company, and of the further sum of ten dollars, being the fee for the registration of this grant required by section forty-two of the said regulations;

The Superintendent General of Indian Affairs hereby grants to (names of members of company) forming together a bed-rock flume company [known as the (title of the company)], the following rights and privileges, that is to say:—

(a) The rights of way through and entry upon any new and unworked river, creek, gulch or ravine, and the exclusive right to locate and work a strip of ground 100 feet wide and 200 feet long in the bed thereof to each individual of the company;

(b) The rights of way through and entry upon any river, creek, gulch, or ravine, worked by miners for any period longer than two years prior to such entry, and already wholly or partially abandoned, and the exclusive right to stake out and work both the unworked and abandoned portions thereof, 100 feet in width and $\frac{1}{4}$ of a mile in length for each individual of the company.

(c) The rights of way through and entry upon all claims which at the time of the notice of application, are in good faith being worked, for the purpose of cutting a channel and laying their flume therein, with such reasonable space for constructing, maintaining and repairing the flume as may be necessary.

(d) The use of so much of the unappropriated water of the stream on which they may be located, and of other adjacent streams, as may be necessary for the use of their flumes, hydraulic power, and machinery to carry on their operations and the right of way for ditches and flumes to convey the necessary water to their works, subject to the payment of any damage which may be done to other parties by running such ditch or flume through or over their ground;

Provided, that the rights herein granted shall apply only to such claims and streams as are here specified:

(insert description of claims and streams) and such other claims and streams as may, after due notice and application, be subsequently added to the above list by the Superintendent General of Indian Affairs, under the hand of the local agent;

Provided also, that the said company shall pay to the local agent, in advance, an annual rent of ten dollars for each quarter of a mile of right of way legally held by them;

Provided further, that this grant is subject to all the provisions of the Indian Lands Mining Regulations in that behalf, whether the same are expressed herein or not.

This grant shall cease and determine at the expiration of years from the date hereof.

Indian Agent.

FORM J.—GRANT FOR DRAINAGE.

No. .

Department of Indian Affairs,

Office of the Indian Agency at , 18 .

In consideration of the payment of a deposit of twenty-five dollars required by section forty-six of the Indian Lands Mining Regulations to be made with the application for a grant of right of way to construct drains, and of the further sum of dollars, being the fee for the registration of this grant required by section forty-seven of the said regulations;

The Superintendent General of Indian Affairs hereby grants to
(name or names of grantee or grantees) the right to
run a drain or tunnel for drainage purposes through the occupied
mining lands here specified (here describe mining lands)
and further, for a term of from the date hereof,
exclusive rights of way through and entry upon the following mining
grounds: (here insert description) for the purpose of
constructing a drain or drains for the drainage thereof; and the right
to charge the following tolls for the use thereof: (insert tariff
of tolls);

Provided, that the grantee shall construct such drain or drains
of sufficient size to meet all requirements within from the
date hereof and keep the same in thorough working order and repair,
and free from all obstructions; and shall, within a reasonable time,
construct proper tap-drains from or into any adjacent claims, upon
being requested to do so by the owners thereof, and in default thereof
shall permit such parties to make them themselves, in which case
such parties shall only be chargeable with one-half the rates of drain-
age toll herein authorized;

Provided, also, that the said grantee shall compensate the own-
ers of lands or holders of claims entered upon by for
any damage they may sustain by the construction of such tunnel
or drain;

Provided, further, that the said grantee shall pay to the local
agent, in advance, an annual rent of ten dollars for each quarter
of a mile of right of way legally held by

Provided, further, that this grant is subject to all the provisions
of the Indian Lands Mining Regulations in that behalf, whether the
same are expressed herein or not.

Indian Agent.

FORM K.—GRANT OF RIGHT TO DIVERT WATER AND CONSTRUCT
DITCHES.

No. .

Department of Indian Affairs,
Office of the Indian Agency at , 18 .

In consideration of the payment of a deposit of twenty-five dollars, required by section fifty of the Indian Lands Mining Regulations to be made with the application for the right to divert water and construct ditches;

The Superintendent General of Indian Affairs hereby grants to (A. B.) for the term of years from the date hereof, the right to divert and use the water from (specify stream or lake) to the extent of inches, and no more, to be distributed as follows: (describe locality of distribution) together with the right to charge the following rates for the use of the said water: (insert rates to be charged) and the rights of way through and entry upon the following mining grounds (insert description) for the purpose of constructing ditches and flumes to convey such water, provided such ditches and flumes are constructed and in working order within from the date hereof;

Provided that this grant shall be deemed to be appurtenant to mining claim No. , and shall cease and determine whenever the said claim shall have been worked out or abandoned, or the occasion for the use of such water upon the said claim shall have permanently ceased;

Provided, also, that this grant is subject to all the provisions of the Indian Lands Mining Regulations in that behalf, whether the same are expressed herein or not.

Indian Agent.

O. C. Oct. 1, 1887; May 2, 1888.

DOMINION LAND TITLES ACT.

FORM E.

Certificate of Title.

Canada—Territories

District.

Registration.

This is to certify that A. B. of , is now the owner of one estate (describe the estate) of and in (describe the property) sub-

ject to the encumbrances, liens and interests notified by memorandum underwritten or endorsed hereon, or which may hereafter be made in the register.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this day of , A.D. 18 .

And if subject to a mortgage say:

The title of A. B. is subject to mortgage, dated the day of , made by A. B. to W. B. to secure (here state the amount secured, the rate of interest per cent. per annum, and the respective dates from which the principal and interest are secured) payable as therein mentioned.

If mortgage is discharged, say:

The above mortgage No. , is discharged this day of , A.D. (here state the distinguishing letter or number of the register and the number of the folio therein).

And if subject to a lease, say:

The title of A. B. is subject to a lease, dated the day of , made by A. B. to Y. Z. for the term of years.

When the transfer is absolute, say:

This certificate of title is cancelled and a new certificate of title No. issued this day of , A.D. 18 .

FORM J.

Transfer.

I, A. B., being registered owner of an estate (state the nature of estate), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed thereon), in all that certain tract of land containing acres, more or less, and being (part of) section township range in the (or as the case may be), (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant refer thereto for descriptions of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram), do hereby in consideration of the sum of dollars paid to me by E. F., the receipt of which sum I hereby acknowledge, transfer to the said

E. F. all my estate and interest in the said piece of land. (Where a lesser estate, describe such lesser estate).

In witness whereof I have hereunto subscribed my name this
day of 18

Signed by said A. B. in the presence of

(Signature.)

FORM K.

Lease.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed thereon) of that piece of land (describe it), part of section township range (or as the case may be), containing acres more or less (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer thereto for description and diagram, otherwise set forth the boundaries for metes and bounds), do hereby lease to E. F., of (here insert description) all the said land, to be held by him, the said E. F., as tenant for the space of years from (here state the date and term) at the yearly rental of dollars, payable (here insert terms of payment of rent), subject to the covenants and powers implied (also set forth any special covenants or modifications of implied covenants).

I, E. F., of (here insert description), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of 18 .

Signed by above named A. B.
as lessor, and E. F., as lessee,
in presence of

(Signature of lessee.)
(Signature of lessor.)

(Here insert memorandum of mortgages and encumbrances.)

FORM L.

Short Covenants in Lease.

Column One.

1. Will not, without leave, assign or sublet.

2. Will fence.

3. Will cultivate.

4. Will not cut timber.

Column Two.

1. The covenantor, his executors, administrators or transferees will not, during the said term, transfer, assign or sublet the land and premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said land and premises, or any part thereof, to be transferred or sublet without the consent in writing of the lessor or his transferees first had and obtained.

2. The covenantor, his executors, administrators or transferees, will, during the continuance of the said term, erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.

3. The covenantor, his executors, administrators and transferees will, at all times during the said term, cultivate, use and manage in a proper, husbandlike manner all such parts of the land as are now, or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage, and will not impoverish or waste the same.

4. The covenantor, his executors, administrators, or transferees, will not cut down, fell, injure or destroy any living timber, or timber-like tree, standing and being upon the said land, without the consent in writing of the said lessor or his transferees.

Column One.

5. Will not carry on
offensive trade.

Column Two.

5. The covenantor, his executors, administrators or transferees, will not at any time during the said term, use, exercise or carry on, or permit or suffer to be used, exercised or carried on, in or upon the said premises, or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling; and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the said premises, or any part thereof, which shall or may be, or grow to the annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

FORM M.

Surrender of Lease.

In consideration of dollars, to me paid by (lessee or his assigns), (as the case may be), I do hereby surrender and yield up from the day of the date hereof unto the lease (describe the lease fully), and the term therein created.

Dated the day of A.D. 18

Signed by the above named \
in the presence of |

FORM N.

Mortgage.

I, A. B., being registered as owner of an estate (here state nature of interest), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed thereon), of that piece of land (description), part of section township range (or as the case may be), containing acres, be the same more or less (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grants, refer thereto for description of parcels and diagrams;

otherwise set forth the boundaries, and accompany the description by a diagram), in consideration of the sum of dollars lent to me by E. F. (here insert description), the receipt of which sum I do hereby acknowledge, covenant with the said E. F. :—

Firstly—That I will pay to him, the said E. F., the above sum of dollars on the day of

Secondly—That I will pay interest on the said sum at the rate of on the dollar, in the year, by equal payments on the day of and on the day of in every year.

Thirdly—(Here set forth special covenants, if any). And for the better securing of the said E. F., the repayment, in manner aforesaid, of the principal sum and interest. I hereby mortgage to the said E. F. my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this day of 18 .

Signed by the above named	}	(Signature of mortgagor.)
A. B., as mortgagor, in pre-		
sence of		

(Insert memorandum of mortgages and encumbrances.)

(For form of transfer of mortgage, see Form P.)

FORM O.

Encumbrance.

I, A. B., being registered as owner of an estate (state nature of estate), subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed thereon), of that piece of land of (description) part of section township range (or as the case may be), containing acres, more or less (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries, and accompany the description by a diagram),

and desiring to render the said land available for the purpose of securing to and for the benefit of C. D., of (description), the (sum of money, annuity or rent charge) hereinafter mentioned; do hereby encumber the said land for the benefit of the said C. D., with the (sum, annuity or rent charge), of _____ to be paid at the times and in the manner following, that is to say: (here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events in which such sum, annuity or rent charge, shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an encumbrancer by this Act). And subject as aforesaid, the said C. D. shall be entitled to all powers and remedies given to an encumbrancer by "The Land Titles Act, 1894."

Signed by the above named _____ }
 in the presence of _____ } (Signature of encumbrancer.)

(Insert memorandum of mortgages and encumbrances.)

FORM R.

Short Covenants in Mortgage.

Column One.

1. Has a good title to the said land.

Column Two.

1. And also that the said mortgagor at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seised of a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple of and in the lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, with their and every part of their appurtenances and of and in every part or parcel thereof without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, encumber or defeat the same.

Column One.	Column Two.
2. Has the right to mortgage the land.	2. And also that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents.
3. And that on default the (mortgagee) shall have quiet possession of the land.	3. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators and assigns peaceably and quietly to enter into, have, use, hold, occupy, possess or enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him, the said mortgagor, his heirs or assigns, or any other person or persons whomsoever.
4. Free from all encumbrances.	4. And that free and clear, and freely and clearly, acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due and payable upon or in respect of the said lands, tene-

Column One.

5. Will execute such further assurances of the land as may be requisite.

Column Two.

ments, hereditaments and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever.

5. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above mentioned proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then, and in every such case, the said mortgagor, his heirs and assigns, and all and every other person or persons whomsoever having or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, or trust of, in, to, or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, with the appurtenances, or any part thereof, by, from, under or in trust for him the said mortgagor shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed all and every such further and other reasonable act, or acts, deed or deeds, devices, conveyances, and assurances in the law for the further, better and more perfectly and absolutely conveying the said lands, tenement, hereditaments and premises with the appurtenances unto the said

Column One.

6. Has done no act to encumber the land.

Column Two.

mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors, or his or their counsel, learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person, who shall be required to make or execute such assurances shall be compelled for the making or executing thereof to go or travel from his usual place of abode.

6. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in anywise impeached, charged, affected or encumbered in title, estate or otherwise howsoever.

FORM S.*Power of Attorney.*

I, A. B., being registered owner of an estate (here state nature of the estate or interest, subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed hereon), (here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel), do hereby appoint C. D. attorney on my behalf to (here state the nature and extent of the powers intended to be conferred as to sell, lease, mortgage, etc.), the land in the said schedule described, and to execute all such instruments and do all such acts, matters and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for

the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof I have hereunto subscribed my name this
day of 18 .

Signed by the above named A. B. }
in the presence of (Signature.)

FORM T.

Revocation of Power of Attorney.

I, A. B., of hereby revoke the power of attorney,
given by me to dated the day of

In witness whereof I have hereunto subscribed my name this
day of 18 .

Signed by the above named A. B. }
in the presence of (Signature.)

FORM V.

Form of Caveat Forbidding Registration or Dealing with Lands.

To the Registrar district :

Take notice that I, A. B., of (insert description), claiming (here state the nature of the estate or interest claimed, and the grounds upon which such claim is founded), in (here describe land and refer to certificate of title), forbid the registration of any transfer or other instrument until this caveat is withdrawn by the caveator or by the order of a Court of competent jurisdiction, or a Judge thereof, or unless such dealing is subject to the claim of the caveator, or until after the lapse of days from the date of the service of notice on the caveator at the following address : (insert it.)

Dated this day of 18 .

Signed by the above named }
in the presence of (Signature of caveator or his agent.)

I, the above named A. B. (or C. D., agent for the above A. B.), of (residence and description), make oath (or affirm, as the case may be), and say that all allegations in the above caveat are true in substance and in fact (and if no personal knowledge, as I have been informed and verily believe.)

Sworn, etc.,

(Signature.)

FORM W.

Affidavit of Attestation of an Instrument.

I (A. B.), of _____ in the
make oath and say :—

1. I was personally present and did see
named in the (within or annexed) instrument, who is personally known
to me to be the person named therein, duly sign and execute the same
for the purposes named therein :

2. That the same was executed at the _____ in the
_____ and that I am the subscribing witness
thereto.

3. That I _____ know the said _____ and
he is, in my belief, of the full age of twenty-one years.

Sworn before me at _____ in the)
this _____ day of)
A.D. 18 .) (Signature.)

FORMS TO "THE MINES ACT" (ONTARIO).

FORM OF APPLICATION FOR MINING LANDS AND OF
AFFIDAVIT OF DISCOVERY.

The Commissioner of Crown Lands, Toronto:

Sir,—I hereby apply for a (grant or lease) under the terms and
provisions of "The Mines Act," R. S. O. 1897, of a mining location
consisting of _____ acres more or less and described as follows:
(If in a surveyed township give name of township and number of

concession and section or lot or part thereof. If in unsurveyed territory give the locality as described by the plans and field notes of the surveyor, or, if the land applied for has not been surveyed, such other description as will enable the Director of Surveys to indicate the locality upon the office map).

Dated at _____, 189 .

District of _____ I, _____ of the _____
 To Wit: } of _____, in the _____
 } of _____ make oath and say:

1. That on the _____ day of _____, 189 , I, or (name of party) on my behalf, discovered valuable ore or mineral on the location named in the above application, that is to say: (Particulars of discovery).

2. That I have no knowledge and have never heard of any adverse claim to the said location by reason of prior discovery or otherwise.

Sworn before me at _____
 in the district of _____
 this _____ day of _____
 A.D. 189 .

AFFIDAVITS IN SUPPORT OF APPLICATION FOR LAND UNDER THE MINES ACT.

Ontario, _____ I, _____ of the township of _____,
 District of _____ } in the district of _____, and I _____,
 To wit: } of the township of _____, in the dis-
 } trict of _____, do solemnly swear:

1. That on the _____ day of _____, I personally visited and carefully examined _____ lot number _____ in the concession of the township of _____, and at that time there was no person residing on said lot, and there were no improvements thereon (or according as the fact is).

2. That there was no visible trace nor indication of work having been done on said lot, by any person or persons for mining or other purposes (as the fact is).

3. And, that to the best of my knowledge and belief there is no claim to said location by any person or persons adverse to that of _____, the applicant, on the ground of priority of discovery of mineral thereon, or otherwise.

Sworn before me at _____)
 in the district of _____ this _____
 day of _____ A.D. 189 .)

AFFIDAVIT OF ORIGINAL DISCOVERER IN SUPPORT OF APPLICATION FOR FREE LOCATION OF FORTY ACRES.

Ontario
District of } I, of , in
To Wit: } the district of , do solemnly swear:

1. That on the day of , A.D. 189 , I discovered valuable mineral in a vein or lode on (describe the location), such mineral consisting of , and that I have no knowledge or information of any previous discovery of valuable mineral on said location, and verily believe that I am the original discoverer of the same.

2. That by careful examination on the ground I have ascertained that the mineral so discovered by me on said location is (state the kind of metal, ore or mineral), and is on or in a vein, lode or deposit at least ten miles from the nearest known occurrence of the same metal, ore or mineral.

3. That the nearest mine, vein or lode of the same metal, ore or mineral to the mineral so discovered by me of which I have any knowledge or information is situated (describe the location).

Sworn before me at the
of in the of }
this day of , A.D. 189 . }

A Commissioner in H. C. J.

The material portions of this affidavit are to be confirmed by the affidavits of two disinterested persons, stating the facts in their knowledge and their means of knowledge. It is desirable that one of the two should, where that is practicable, be an Ontario Land Surveyor. The form is given hereunder.

AFFIDAVIT OF ONTARIO LAND SURVEYOR RE APPLICATION FOR FREE LOCATION OF FORTY ACRES.

Ontario
District of } I, of the of , in
To Wit: } the of , do solemnly swear:

1. That I am a duly qualified Ontario Land Surveyor.

2. That on the day of , A.D. 189 , I visited (describe the location) and saw the valuable metal, ore or mineral on

or in a vein, lode or deposit thereon, of which one claims
to be the original discoverer, such metal, ore or mineral consist-
ing of .

3. That on the said date I carefully examined the location of
said metal, ore or mineral, and that to the best of my knowledge and
information the same is at least ten miles from the nearest known
mine or occurrence of the said metal, ore or mineral.

4. That the nearest known mine, vein, lode or deposit of metal,
ore or mineral of which I have any knowledge or information is
situated (describe its location).

Sworn before me at the }
of in the of }
this day of , A.D. 189 . }

A Commissioner in H. C. J.

The above affidavit may be used by others than surveyors in
proof of claim, striking out clause 1 in such case.

TRANSFER OF MINING LEASE No.

of the of in the of
being the lessee of the lands demised by a certain mining lease
granted by Her Majesty the Queen to dated the
day of 189 , and numbered in the register of
mining leases in the Department of Crown Lands as Number ,
which lands may be more particularly known and described as fol-
lows, that is to say:
in consideration of the sum of dollars paid to
by of the receipt of which sum
is hereby acknowledged, and of do hereby transfer
to the said right, title and interest in and to the
land demised as aforesaid.

And do hereby accept such transfer of the
right, title and interest of the said in and to the
said demised lands subject to the provisions of "The Mines Act,"
and the regulations made thereunder, and do hereby agree to be
bound by all and singular the terms, covenants, provisions, restric-
tions and reservations in the said lease.

In witness whereof we have hereunto set our hands and seals
this day of A.D. 189 .

Signed, sealed and delivered }
in the presence of }

I hereby sanction and authorize the transfer of the interest of
to in the above named lease.

Commissioner of Crown Lands.

Dated at Toronto this day
of A.D. 189 . }

Province of Ontario. } I, of the
of of in the of
To wit : } make oath and say:

I am well acquainted with named in the
within document, and saw him sign the said document, and the
signature purporting to be his signature at the foot of the said docu-
ment is in his handwriting.

The said is, as I verily believe, the lessee of the
land within mentioned.

The said is of the age of 21 years or over, of sound
mind, and signed the document voluntarily at in the
of and Province of Ontario.

I am a subscribing witness to the said document.

Sworn before me at the
of in the
of this
day of A.D. 189 . }

A Commissioner in H. C. J.

MICHIPICOTON MINING DIVISION.

Notice of Mining Claim and Affidavit of Discovery.

To the Inspector of Mines:

Sir,—I, of in the (Province or state)
holder of Miner's License No. do hereby present a notice of
claim under the terms and provisions of "The Mines Act," R. S. O.

1897, and of the Regulations for Mining Divisions made thereunder, for a mining claim consisting of _____ acres more or less, according to the sketch or plan attached hereto, and which may be more particularly described as follows:

Memo. for License. Set forth the name (if any) of the claim, and its locality as indicated by some general description or statement; length of boundary lines if for any cause they are not regular, and nature of such cause; situation of discovery post as indicated by distance and direction from first corner post; time (date and hour) when discovery of ore or mineral was made; when claim was marked or staked out and lines blazed; and date of this notice. See No. 18 to 25 inclusive of regulations approved by the Lieutenant-Governor in Council, January 29, 1898.

Dated at _____ Signature of licensee in full.
189 _____

CERTIFICATE OF RECORD OF MINING CLAIM.

(Michipicoton Mining Division.)

This is to certify that _____ licensee under Mining License No. _____ did on the _____ day of _____ file in this office the sketch or plan, notice and affidavit in accordance with section 25 of the Regulations for Mining Divisions of 29th January, 1898, relating to Mining Claim No. _____ described as follows:

And there being no dispute as to the rights of the said licensee to the said claim by reason of prior discovery or otherwise, this certificate is granted pursuant to section 26 of the said Regulations.

Dated _____ 18 _____
Inspector of the Division.

TRANSFER OF MINING CLAIM.

I, _____ licensee under Miner's License No. _____, Michipicoton Mining Division, in consideration of _____ dollars to me paid by _____ licensee under Miner's License No. _____ in the said Mining Division, do hereby transfer to the said _____ my interest in Mining Claim No. _____ described as follows :

License No. _____, _____ dollars
 Driver's License No. _____
 Transfer to the said _____
 described _____

until such company has deposited in the office of our Provincial Secretary a true copy of the Act, charter or other instrument incorporating the company, verified in the manner which may be satisfactory to our Lieutenant-Governor in Council, together with a duly executed power of attorney under its common seal empowering some person therein named and residing in our Province of Ontario to act as its attorney, and to sue and be sued, plead or be impleaded in any Court, and generally on behalf of such company, and within our said Province, to accept service of process, and to receive all lawful notices, and for the purposes aforesaid to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney.

And whereas it has been made to appear that a company incorporated under the laws of the Imperial Parliament of our kingdom of Great Britain and Ireland on the day of one thousand eight hundred and ninety desires to carry on certain of its business within our Province of Ontario, and for that purpose has applied to our Lieutenant-Governor in Council for the issue of a license in that behalf, and has deposited in the office of our Provincial Secretary a true copy of the memorandum and articles of association of the said company, together with a duly executed power of attorney, verified in the manner which is satisfactory to our Lieutenant-Governor in Council.

And whereas it has appeared to our Lieutenant-Governor in Council expedient to grant to the said authority to use, exercise and enjoy within our said Province of Ontario such of the powers, privileges and rights as are hereinafter set forth.

Now, know ye, that by and with the advice of our Executive Council of our Province of Ontario, and under the authority of the hereinbefore recited statute, and of any other power or authority whatsoever in us vested in this behalf, we do, by this our license, grant to the powers, privileges and rights required for the due carrying on within our Province of Ontario of the business hereinafter specified as fully as if the said the had been incorporated under the said Act respecting the Incorporation and Regulation of Joint Stock Companies, that is to say:—

To carry on, in all its branches, the business of a mining, milling, reduction and development company, and, for the said purposes only, (a) to prospect for, open, explore, develop, work, improve, maintain, and manage gold, silver, copper, coal, iron and other mines,

mineral and other deposits and properties, and to dig for, raise, crush, wash, smelt, assay, analyze, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same, or any part thereof, or any interest therein; (b) to acquire by purchase, lease, concession, license, exchange or other legal title, mines, mining lands, easements, mineral properties, or any interest therein, minerals and ores and mining claims, options, powers, privileges, water and other rights, patent rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, or any interest therein; (c) to construct, maintain, alter, make, work and operate on the property of the company, or on property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water powers, aqueducts, walls, roads, piers, wharves, buildings, shops, stamping mills and other works and machinery, plant and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, implements, provisions, chattels and effects required by the company, or its workmen or servants; (d) to build, acquire, own, charter, navigate and use steam and other vessels; (e) to take, acquire and hold as the consideration for ores, metals or minerals sold or otherwise disposed of, or for goods supplied, or for work done by contract or otherwise, shares, debentures, bonds or other securities of or in any other company having objects similar to those of the company hereby licensed, and to sell or otherwise dispose of the same; (f) to enter into any arrangement for sharing profits, union of interests, or co-operation with any other person or company, carrying on or about to carry on any business or transaction which may be of benefit to the company hereby licensed; (g) to purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person or company carrying on any part of the business which the company hereby licensed is authorized to carry on, or possessed of property suitable for the purposes thereof; (h) to subscribe for and take and hold shares or stock in any company incorporated as provided by section 14 of the Act respecting the Incorporation and Regulation of Mining Companies for the purpose of acquiring, holding, constructing, maintaining and keeping in repair

roads, bridges, improvements in waterways, or other means of communication, and drainage works and other improvements upon, through, over or adjacent to, or leading to or from the lands of the company incorporated under section 2 of the said Act; provided that the consent of the shareholders shall be first obtained by resolution passed at a special general meeting called for that purpose, and (i) to do all such acts, matters and things as shall be incidental or necessary to the due attainment of the above objects, or any of them.

And we direct that the said _____ shall be subject to such provisions as the Legislature of our Province of Ontario may deem to be expedient in order to secure the due management of its affairs within our said Province.

And we further direct that this our license shall be forfeited by non-user during two consecutive years at any one time.

In testimony whereof we have caused these our letters to be made patent and the Great Seal of our Province of Ontario to be hereunto affixed.

Witness: The Honourable Lieutenant-Governor of our Province of Ontario.

At our Government House, in our city of Toronto, in our said Province, this _____ day of _____ in the year of Our Lord one thousand eight hundred and ninety _____ and in the _____ year of our reign.

By command.

Assistant Secretary.

The following forms are sanctioned by "The Land Titles Act," R. S. O. 1897, c. 138.

7.—FORM OF CERTIFICATE OF OWNERSHIP.

(Rule 40.)

LAND TITLES ACT.

This is to certify that A. B. is the owner (etc., in terms of the entry in the register).

16.—CAUTION UNDER SECTION 85 AGAINST FIRST
REGISTRATION.

(Rule 20.)

LAND TITLES ACT.

I, A. B., of etc., have such an interest in the land hereinafter particularly described as entitles me to object to any disposition thereof being made without my consent, and I am entitled to notice of any application that may be made for the registration of such land.

The following is a particular description of the said land, that is to say (here insert description of land to be affected by the caution).

My address for service of notice is _____, in the _____ of _____, in the county of _____; my post office address is _____.

Dated this _____ day of _____, 18 ____.

(Signature of the cautioner or his solicitor.)

17.—AFFIDAVIT IN SUPPORT OF CAUTION LODGED BEFORE FIRST REGISTRATION UNDER SECTION 85.

(Rule 20.)

LAND TITLES ACT.

I, A. B., of etc., make oath and say as follows:

My interest in the land described in the above (or annexed) caution entitles me to object to any disposition of the said land being made without my consent, and the nature of such my interest is as follows: [here state particulars of cautioner's interest.]

Sworn, etc.

19.—CAUTION UNDER SECTION 75 AFTER REGISTRATION.

(Rule 21.)

LAND TITLES ACT.

I, A. B., of etc., being interested in the land registered in the name of G. H., as parcel 40 in the register for the township of York (or in the charge registered as No. _____, in the name of E. F., of,

etc., as owner and being on parcel 40, township of York [as the case may be],) require that no dealing with such land (or charge) be had on the part of the registered owner until notice has been served upon me.

My address for service of notice is lot , in the concess-
sion, in the county of , and my post office address is .

Dated this day of , 18 .

Signature of the cautioner or his solicitor.

20.—AFFIDAVIT IN SUPPORT OF CAUTION LODGED AFTER REGISTRATION UNDER SECTION 75.

(Rule 21.)

LAND TITLES ACT.

I, A. B., of, etc., make oath and say, as follows:—

I am interested in the land (or charge) mentioned in the above (or annexed) caution, and the particulars of my interest are as follows [here state particulars].

Sworn, etc.

21.—APPLICATION FOR NOTICE TO TERMINATE CAUTION IN RESPECT OF LAND.

(Section 76, Rule 22.)

A. B., the registered owner (or the transferee of C. D., the registered owner) of the land registered as parcel 486 in the register of Land Titles for the township of York in the name of the said A. B. (or C. D.), applies to the Master of Titles for a notice to be served with a view of terminating Caution 4846 lodged by E. G. requiring that no dealing with the said land should be had on the part of the registered owner until notice (etc., according to the terms of the caution).

This application is made because (state grounds of application).

The address of the said A. B. for service is the office of his solicitor X. Y., 14 Court Street, Toronto.

Dated this day of , A.D. 18 .

X. Y.,

Solicitor for A. B.

23.—AUTHORITY TO NOTIFY WITHDRAWAL OF CAUTION.

(Rule 22.)

LAND TITLES ACT.

I, A. B., of, etc., who registered a caution in respect of the land registered as parcel 40 in the register for the township of York (or in respect of a charge registered as No. , and being on parcel 40, township of York, as the case may be) hereby authorize the Master of Titles to enter in the register a withdrawal of the said caution and to cancel the same.

Dated the day of , 18 .

A. B.

Witness:

E. F.

24.—AFFIDAVIT ATTESTING EXECUTION OF WITHDRAWAL OF CAUTION.

(Rule 22.)

LAND TITLES ACT.

I, G. H., of, etc., a solicitor of the Supreme Court of Judicature (or as the case may be) make oath and say:—

I am well acquainted with A. B. named in the above withdrawal of caution, and the signature purporting to be his signature at the foot of the said document is in his handwriting. I believe the said A. B. to be the person who registered the caution referred to in the said document.

The said A. B. is of the age of 21 years or over, and is of sound mind, and signed the said document voluntarily at Toronto, in the Province of Ontario (or as the case may be).

I am a subscribing witness to the said document.

Sworn, etc.

25.—APPLICATION FOR INHIBITING ORDER UNDER SECTION 81.

(Rule 23.)

LAND TITLES ACT.

C. D., of, etc., being interested in the land registered in the office of Land Titles at , in the name of , as parcel in the register for the township of (or in charge No.)

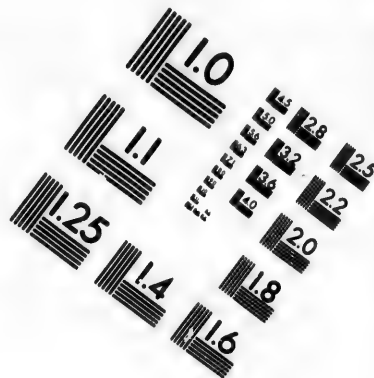
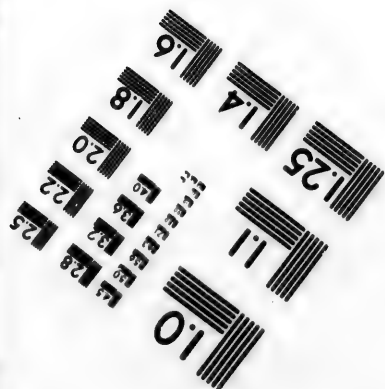
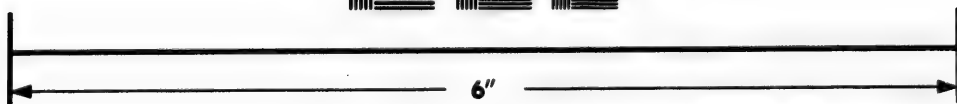
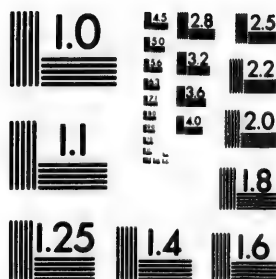


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registered the _____ day of _____, 18____, in the name of _____ on the land, etc., as the case may be) hereby requests the Master to inhibit until further order or entry (or otherwise, as the case may be) any dealing with the said land (or charge).

The grounds of this application, and evidence to be produced in support thereof, are stated (or referred to) in the affidavit of the said C. D. (or of E. F., the solicitor of the said C. D.) filed herewith.

The address of the said C. D. for service is (here state address).

Dated, etc.

_____(Signature of C. D. or his solicitor.)

Affidavit to be filed stating particulars of applicant's title.

26.—APPLICATION UNDER SECTION 82 TO REGISTER RESTRICTION.

(Rule 24.)

LAND TITLES ACT.

A. B., the registered owner of the land registered in the office of Land Titles at _____, as parcel _____ in the register for the township of _____, requests the Master to make an entry in the register that no transfer shall be made of, or charge created on such land, unless [here insert the terms of the restriction required to be entered].

Dated the _____ day of _____, 18____.

_____(Signature of owner.)

27.—APPLICATION UNDER SECTION 83 TO WITHDRAW OR MODIFY RESTRICTION.

(Rule 24.)

LAND TITLES ACT.

A. B., the registered owner of the land registered in the office of Land Titles at _____, as parcel _____ in the register for the township of _____, C. D., of, etc., and E. F., of, etc., request that the restriction on transferring or charging the said parcel on the register, a note whereof was made on the register on the _____ day of _____, 18____, may be withdrawn (or modified in the following manner, here state the nature of the modification required).

Dated the _____ day of _____, 18____.

_____(Signatures of A. B., C. D., E. F., etc.)

Witness to all the signatures,

X. Y.

* The applicants must be all the persons interested in the restriction.

28.—CHARGE OR MORTGAGE WITH BAR OF DOWER.

(Sections 33-39, Rule 25.)

LAND TITLES ACT.

I, A. B., the registered owner of the land entered in the office of Land Titles at _____, as parcel _____ in the register for _____, in consideration of (\$2,000) paid to me, charge such land with the payment to C. D., of, etc., on the _____ day of _____, 18____, of the principal sum of (\$2,000) with interest at the rate of _____ per cent. per annum, and with a power of sale to be exercised after default, and _____ months' subsequent notice of the intention to sell (or as the case may be). (Add any covenants which are agreed to and are not implied under the Act or otherwise).

I, E. B., wife of the said A. B., hereby bar my dower in the said land.

This charge is made in pursuance of "The Act respecting Short Forms of Mortgages" (where it is desired that the covenants, etc., should operate under that Act.)

Dated the _____ day of _____, 18____.
(Signatures of A. B. and E. B.)

Witness,

X. Y. (No seal necessary.)

NOTE.—If no interest is to be payable, or no power of sale given, substitute the words "without interest," or "without a power of sale," as the case may be. For affidavits of execution see Forms 46 and 47, and where executed under power of Attorney see Form 48.

29.—TRANSFER OF CHARGE OR MORTGAGE.

(Section 57.)

LAND TITLES ACT.

I, C. D., the registered owner under the Land Titles Act, of the charge dated the _____ day of _____, 18____, made by A. B., etc., and registered as number _____, charging the land registered as parcel 6, township of York (as the case may be) in consideration of (\$2,000) paid to me, transfer such charge to E. F., of, etc., as owner.

[Where the charge is transferred upon an agreement to re-transfer the same upon the payment of a sum of money or upon the performance of any other conditions agreed upon, insert:

A. B. hereby agrees that he will, upon payment to him of the sum of _____ on the _____ day of _____, 18____, with interest thereon

at per cent. from the day of , 18 , re-transfer
the said charge to the said C. D. or as the case may be.]

Dated the day of , 18 .

(Signature of registered owner of charge.)

Witness,

X. Y.

(No seal necessary.)

30.—TRANSFER OF FREEHOLD OR LEASEHOLD LAND.

(Sections 41-56, Rule 30).

LAND TITLES ACT.

I, A. B., the registered owner of the land (or leasehold land)
registered in the office of Land Titles at , as parcel 6, township
of York (as the case may be), in consideration of (\$3,000) paid to me,
transfer such land to C. D., of., etc.

Dated the day of , 18 .

(Signature of registered owner.)

Witness,

X. Y.

(No seal necessary.)

NOTE.—For affidavit of execution, see Forms 46 and 47, and where
under power of Attorney, Form 48.

31.—TRANSFER OF FREEHOLD OR LEASEHOLD LAND IN PARCELS.

(Sections 41-56, Rule 30.)

LAND TITLES ACT.

I, A. B., the registered owner of the freehold (or leasehold) land
registered in the office of Land Titles at , as parcel in
the register for North-West Toronto, in consideration of \$1,500 paid
to me, transfer to C. D., of., etc., the land hereinafter particularly
described, namely (describe portion transferred), being part of the
said parcel.

And I, E. B., wife of the said A. B., hereby bar my dower in the
said land.

Witness,

X. Y.

(Signatures.)

(No seals necessary.)

NOTE.—For affidavit of execution, see Forms 46 and 47, and where
under power of Attorney, Form 48.

32.—SPECIAL APPLICATION TO NOTIFY CESSATION OF
INCUMBRANCE OR LEASE CREATED BEFORE FIRST
REGISTRATION.

(Section 30, Rule 35.)

LAND TITLES ACT.

A. B., the registered owner of the land entered in the register
for as parcel hereby requests the Master to notify on
the register the cessation of the incumbrance (describing it) (or the
determination of the lease, describing it), entered upon the register,
the same being discharged (or determined), as appears by the abstract
of title marked B. (or as appears from the receipt endorsed upon the
instrument of incumbrance, or otherwise, as the case may be), and
the affidavit of lodged herewith.

Dated the day of , 18 .
(Signature of A. B. or his Solicitor.)

37.—APPLICATION FOR REGISTRATION OF NOTICE OF
LEASE, OR AGREEMENT FOR LEASE.

(Sections 72 and 73, Rule 36.)

LAND TITLES ACT.

C. D., of, etc., being interested in the land entered in the register
for as parcel , of which A. B. is the registered
owner, by reason of the lease (or agreement for a lease) annexed here-
to, hereby requires the Master of Titles to enter a notice of the said
lease (or agreement) upon the register.

A. B., the registered owner of the above land, concurs in this
application.

The address of the said C. D. for service is (here give address).

Dated this day of , 18 .

Witness to the signature of C. D.,

E. F. Signatures of C. D. and A. B.

Witness to the signature of A. B.,

X. Y.

45.—APPLICATION UNDER SECTION 104 TO ANNEX CONDITIONS OR COVENANTS TO REGISTERED LAND.

(Rule 39.)

LAND TITLES ACT.

A. B., the registered owner of the land entered on the register for as parcel , and part of which is about to be transferred to C. D., of, etc., pursuant to the instrument of transfer left herewith, hereby requests the Master of Titles to register, as annexed to the part of the land to be so transferred, the conditions (or covenants) a copy of which is left herewith.

The said C. D. consents to this application.

Dated this day of , 18 .

(Signatures of A. B. and C. D.)

Witness,

X. Y.

46.—AFFIDAVITS ATTESTING EXECUTION OF INSTRUMENT WHERE BAR OF DOWER AND IDENTIFYING PARTIES.

(Rule 54.)

LAND TITLES ACT.

I, G. H., of, etc., a solicitor of the Supreme Court of Judicature (or as the case may be), make oath and say:

I am well acquainted with A. B. and C. D., named in the within document, and saw them sign the said document, and the signatures purporting to be their respective signatures at the foot of the said document are in their handwriting.

The said A. B. is, as I verily believe, the owner of the land within mentioned, and the said C. B. is reputed to be, and is, as I verily believe, his wife.

The said A. B. and C. B. are each of the age of 21 years or over, are each of sound mind and signed the said document voluntarily at , in the county of , in the Province of Ontario (or as the case may be).

I am a subscribing witness to the said document.

Sworn, etc.

NOTE.—Where the affidavit is made by a clerk in a law office or other employee, this fact should be stated and the name of the employer given so as to facilitate identification. Where it is unlikely that the Master of Titles is acquainted with the witness the Commissioner should add a certificate that the witness is well known to him and is of good repute.

LAND TITLES ACT.

I, A. B., above (or within) named, make oath and say:

That C. B. who executed the above (or within) instrument is my wife, and that we are both of the age of 21 years or over (or as the case may be).

47.—AFFIDAVITS ATTESTING EXECUTION OF TRANSFER
OF LAND WHERE TRANSFEROR UNMARRIED.

(Rule 54.)

LAND TITLES ACT.

I, G. H., of, etc., solicitor of the Supreme Court of Judicature (or as the case may be), make oath and say:

I am well acquainted with A. B. named in the within document and saw him sign the said document, and the signature purporting to be his signature at the foot of the said document is in his handwriting.

The said A. B. is of the age of 21 years or over, he is reputed to within mentioned.

The said A. B. is of the age of 21 years or over, he is reputed to be, and as I believe is, unmarried, he is of sound mind and signed the said document voluntarily at _____, in the county of _____ and Province of Ontario (or as the case may be).

I am a subscribing witness to the said document.

Sworn, etc.

LAND TITLES ACT.

I, A. B., above (or within) named, make oath and say that I am an unmarried man and am of the age of 21 years or over.

Sworn, etc.

48.—ADDITIONAL AFFIDAVIT UNDER RULE 50 WHERE
INSTRUMENT IS EXECUTED UNDER A POWER OF
ATTORNEY.

LAND TITLES ACT.

I, C. D., of, etc., make oath and say:

That the power of attorney under which I executed the within (or above) instrument on behalf of A. B. is unrevoked and in full force.

Sworn, etc.

C. D.

49.—FORM OF POWER OF ATTORNEY TO MAKE TRANSFERS.

(Rule 50.)

LAND TITLES ACT.

I, A. B., do appoint C. D. my attorney to transfer to E. F. absolutely (or by way of mortgage, as the case may be), all my lands as entered and described in the register for the township of _____ in the office of Land Titles at _____ as parcel _____, and my estate therein.

Dated this _____ day of _____, 18 ____.

Signature of A. B.

Witness,

X. Y.

(No seal necessary.)

(If such is the intention, add: This power shall not be revoked by the death of the said A. B., and the exercise of the same after his death shall be binding on his representatives).

NOTE.—For affidavit that power of Attorney in force, see Form 48.

50.—FORM OF REVOCATION OF POWER OF ATTORNEY.

LAND TITLES ACT.

I, A. B., of _____, hereby revoke the power of attorney, given by me to C. D., dated the _____ day of _____, 18 ____.

In witness whereof I have hereunto subscribed my name this day of _____, 18 ____.

(Signature of A. B.)

Witness,

X. Y.

53.—AFFIDAVIT OF VALUE FOR FIXING INSURANCE FEES.

(Section 130.)

LAND TITLES ACT.

I, A. B., of the _____ in the county of _____, make oath and say:

1. That I am the registered owner of lot (describing land) registered in the Land Titles Office at _____ as parcel _____.

2. That the said land is not worth more than _____ dollars.
Sworn, etc.

APPENDIX OF FORMS TO QUEBEC MINING ACT.

SCHEDULE A.

FORM OF PRIVATE LANDS' MINING LICENSE, WHERE THE MINING
RIGHT BELONGS TO THE CROWN, UNDER ARTICLE 1460.

Province of }
Quebec. } Mining division of

E. F. , having paid a fee of five dollars and an
annual rent of dollars per acre, is hereby authorized to mine
for (here indicate what mineral) during twelve months from the
day of the month of 18 , upon the
lands of (here give the name of the private owner and
describe the land) in this division, subject to the conditions and re-
strictions set forth in the Quebec Mining Law and the regulations
made in conformity therewith.

Dated at , this day of 18 .
(Signature), A. B.

Commissioner of Crown Lands.

43-44 Vict. c. 12, Schedule A, and R. S. Q. 1478.

SCHEDULE B.

FORM OF PUBLIC LANDS' MINING LICENSE UNDER ARTICLE 1460.

Province of }
Quebec. } Mining Division of

E. F. , having paid a fee of five dollars and a rent
of dollars per acre, is hereby authorized to mine for (here
indicate what mineral), during twelve months from the day
of the month of , 18 , upon
(describe the lands) in this division, subject to all the conditions and
restrictions set forth in the Quebec Mining Law, and to the regula-
tions made in conformity therewith.

Dated at , this day of , 18 .
(Signature), A. B.

Commissioner of Crown Lands.

43-44 Vict. c. 12, Schedule B, and R. S. Q. 1478.

SCHEDULE C.

FORM OF NOTICE TO WORK UPON PRIVATE LANDS GIVEN UNDER
ARTICLE 1466.

Province of } Mining Division of
Quebec.

I (or we, as the case may be), residing in the county of
, in the district of (or having made elec-
tion of domicile at), in the Mining Division of
, hereby give you notice:

1. That I intend to mine for (here indicate the mineral on your
land);

2. That I am ready to enter into any possible amicable arrange-
ment with you to enable me so to mine;

Therefore, within one month from the service of this notice, be
good enough to come to an amicable understanding with me, unless
you prefer to take the steps required by law to mine upon your own
land, and give notice without delay to the proper person.

Signed at , this day of the month of
, one thousand eight hundred , in
presence of the Inspector of the Mining Division of

(Signature),

C. D.
Petitioner.

(Countersigned),

A. B.

Inspector of the Mining Division of

43-44 Vict. c. 12, Schedule G, and R. S. Q. 1484.

SCHEDULE D.

FORM OF NOTICE, IF THE PRIVATE PERSON REFUSES TO COME TO A
MUTUAL UNDERSTANDING, UNDER ARTICLES 1468 AND 1471.

Province of } Mining Division of
Quebec.

Whereas it appears, by the return of service made by
bailiff of the Superior Court, or by the certificate of service made
by , constable for the Mining Division of

(as the case may be), on the _____ day of the month of _____ one thousand eight hundred _____, that the proprietor of the lot situate and being in the _____ range of _____ (parish or township) in the county of _____, district of _____, which lot is bounded by _____, is absent from the Province, or, is unknown, or, has refused to come to a mutual understanding with the petitioner.

Public notice is hereby given by the undersigned _____, of the parish of _____, county of _____ district of _____ (or, having elected his domicile at _____), that:

1. He intends to mine for (here indicate the minerals) on the above described lot;

2. He is prepared to pay the sum or rent deemed necessary as compensation for such lot or damages assessed by arbitration according to law; and that

3. The name of his arbitrator is _____, of the parish of _____, county of _____, in the district of _____;

Therefore the said (name the proprietor of the lot if known), proprietor, is called upon to appoint his arbitrator, within one month from the first insertion of the present notice in the newspapers according to law.

(Signature),

C. D.

Petitioner.

(Countersigned),

A. B.

Inspector of the Mining Division of

43-44 Vict. c. 12, Schedule H, and R. S. Q. 1487.

SCHEDULE E.

FORM OF ANSWER BY A PRIVATE PERSON TO A NOTICE REQUIRING THE RIGHT TO A MINE ON HIS LANDS, UNDER ARTICLE 1472.

Province of } Mining Division of
Quebec.

I (or we, as the case may be), in answer to your notice, dated the _____ day of the month of _____, 18____, declare that I desire to enter into an amicable arrangement with you, respecting the mining operations, which you wish to commence on my land (or if the private person wishes to mine his own land), that I intend to take out a license, within the legal delays, to mine my own land:

(and if the private person should appoint an arbitrator) that I have appointed Mr. _____, of the parish (or township) of _____, in the county of _____, district of _____, to act as my arbitrator in the arbitration required by you.

Dated at _____ this _____ day of the month of _____, 18 .

(Signature),

E. F.

Proprietor.

43-44 Vict. c. 12, Schedule I, and R. S. Q. 1487.

SCHEDULE F.

FORM OF NOTICE, RESPECTING THE CHOICE AND DESCRIPTION OF MINING LAND, GIVEN UNDER ARTICLES 1491, 1492 AND 1493.

Province of } Mining Division of
Quebec. }

To the Inspector of the Mining Division of

I (or we), (give the name of the person, firm or company) of _____ give notice:

1. That I have chosen and staked out mining land upon public lands, as follows, to wit: (describe the claim by its extent, boundaries and exact situation, and produce a plan if necessary) in the parish (or township) of _____, on the _____ day of _____, 18 ;

2. That, to conform to the Quebec Mining Law, I make an election of domicile at (the precise locality), in the parish (or township) of _____ and require the registration of these presents.

(Date and signature),

Applicant.

47 Vict. c. 22, s. 26, Schedule C, and R. S. Q. 1508.

SCHEDULE G.

FORM OF FREE LICENSE, TO THE DISCOVERER OF A NEW MINE, UNDER ARTICLE 1494.

Province of } Mining Division of
Quebec. }

E. F. _____, of the parish (or township) of _____, in the district of _____, having reported, under the Quebec Mining Law,

SCHEDULES.

(A)

THIS INDENTURE, made this day of , in the year of our Lord one thousand eight hundred and , between the Queen's Most Excellent Majesty of the one part, and , hereinafter described as lessee, of the other part,

WITNESSETH, That in consideration of the royalties hereby served, and of the covenants and agreements herein contained, and on the part and behalf of the said lessees, their executors, administrators and assigns to be observed and performed, our Sovereign Lady the Queen, of her special grace, certain knowledge and mere motion, doth grant and demise unto the said lessees, their executors, administrators and assigns, all that certain tract of land situate at gold district, in the county of known and described as follows, that is to say:—

An area composed of area of Class Number One, and numbered on the plan of said gold district, signed by the Surveyor-General and filed in his office, as by reference to the same will appear.

AND ALSO, All and singular the beds, veins and seams of gold and silver, gold-bearing and silver-bearing quartz, and other gold-bearing rocks and silver-bearing rocks and minerals, and gold-bearing and silver-bearing earth, and all the gold and silver, whether in quartz, grain or otherwise, in, situate and being within the limits of the said tract, and within, under or upon the same. Provided always, and it is the true intent and meaning of these presents and of the parties hereto, that nothing herein contained shall in any manner interfere with any of the rights of the owner or owners of the land in which such area is situated, but the said rights are reserved unto the said owner or owners, their heirs and assigns; and it is further agreed and understood, that the said lessees shall not enter into the said area without the special leave and license of the owner or owners thereof, unless the said lessees shall have taken proceedings in accordance with the general Mining Act of "Mines and Minerals."

TO HAVE AND TO HOLD the said tract of land and the said beds, veins and seams of gold and silver, and gold-bearing and silver-bearing quartz, and all other the gold-bearing rocks and silver-bearing

ing rocks and minerals, and gold-bearing and silver-bearing earth, and gold and silver, whether in quartz or otherwise, in, under and upon the same, to the said lessees, their executors, administrators and assigns, for, during and unto the full end and term of twenty years, to commence and be computed from the

day of _____, fully to be complete and ended; yielding and rendering to our Sovereign Lady the Queen, her heirs and successors, quarterly and every quarter, upon the first days of January, April, July and October, in each and every year during the continuance of this demise, at the Crown Land Office, a royalty of two and a half per cent. upon the gross amount of gold and silver obtained, mined, had, wrought, or gotten from or out of the said demised premises, or out of any quartz, slate, rock, mineral or earth mined, obtained, had or gotten out of the same in any other way than from quartz or other material crushed by licensed mills, at the rate of nineteen dollars per ounce troy, for smelted gold and eighteen dollars for unsmelted gold, and at the rate of one dollar per ounce troy, for silver nine hundred fine.

And the said lessees do hereby covenant, promise and agree to and with our said Sovereign Lady the Queen, her heirs and successors, that the said lessees, their executors, administrators and assigns, shall and will well and truly pay and deliver, or cause to be paid and delivered, to our Sovereign Lady the Queen, her heirs and successors, at the times and places, and in the manner aforesaid, the said royalty hereby reserved under the terms and provisions of this lease.

AND ALSO, That the said lessees, their heirs, executors, administrators and assigns, shall and will during the continuance of this demise, keep or cause to be kept, one or more book or books of account, wherein the entries shall be made of all such gold and gold-bearing quartz, silver and silver-bearing quartz and mineral, and other rock containing gold or silver, and all gold or silver in grain or otherwise, as shall from time to time be mined, wrought, had, gotten, or obtained out of the said demised premises, and also of the names of the men actually employed in the working of the said demised premises, and the number of days' labour performed by such men, with the respective dates thereof, and also the names of the person or persons to whom any quartz or gold-bearing or silver-bearing earth, or other gold-bearing or silver-bearing material raised from the demised premises has been sold or disposed of, with the price or percentage upon the yield thereof received therefor, and also the weight of any quartz or other gold-bearing or silver-

bearing material raised from the demised premises, which may be sent to any licensed mills for crushing quartz, the name and description of the mill to which the same has been sent, and also the yield of gold and silver from such quartz or other material as returned by the mill owner; and also that such book or books of account shall at all times be open and subject to the inspection and examination of the Surveyor-General or his deputy, or any inspector of mines, and also of any other person or persons thereto specially appointed by the Surveyor-General for the time being; and also that the said lessees, their executors, administrators or assigns, shall upon the first days of January, April, July and October, in each and every year during the continuance of this demise, deliver, or cause to be delivered to the Surveyor-General or his deputy, a true and correct return on forms to be supplied by the Surveyor-General, which shall show the particulars prescribed and required by the General Mining Act, verified by an affidavit of some one or more suitable person or persons employed in or about the working or management of the mines hereby granted and demised, and shall in all respects obey, abide by, perform, and fulfil all the requirements of the said Act.

AND LIKEWISE, That the said lessees shall annually cause to be employed on the demised premises so many men as shall make the whole labour performed thereon during the year in opening and working the said mines amount in all to the number of days' labour; and also shall and will during the continuance of this grant or demise work the said mine in a good and workmanlike manner, and shall and will from time to time and at all times during the continuance of this grant or demise well and effectually maintain and support all and every the working pits, shafts, levels, drifts and water-courses of and belonging to the said mine, with all such timber and deals and other materials as shall be necessary or requisite for that purpose, and so as to prevent the same and the roofs of the said mines from falling in, or being otherwise damaged; and shall and will at the end or other sooner determination of the said term peaceably and quietly yield and deliver unto the Surveyor-General, or to such other person or persons as the Lieutenant-Governor for the time being shall appoint under his sign manual to receive and take possession thereof, all the said mines and all and singular other the premises hereinbefore mentioned, except such furnaces, engines, mills, forges, foundries, railroads, implements, houses and buildings as shall not be attached to the freehold, in such good order, plight and condition as fair wrought mines ought to be left, with such timber, deals and other material as aforesaid (such mines as during the

term hereby granted shall be abandoned by reason of their being unproductive only excepted.) Provided always and it is hereby agreed and declared, and the said lessees, for themselves, their heirs, executors, administrators and assigns, do accept this grant or demise under the condition, that in case default shall be made by the said lessees, their executors, administrators or assigns, in keeping such book or books of account, or in making such entries therein, or in delivering such affidavit or affidavits as aforesaid, or in payment of the said royalties hereby reserved for the space of ten days after the periods hereinbefore appointed for paying the same, or in the keeping annually employed on the demised premises the amount of labour herein above specified, or if the affidavits hereinbefore set forth and required to be made shall be false and fraudulent, or any other covenant herein contained shall not be kept and observed, then and in every or any or either of the said cases these presents and all and every the powers and privileges hereby granted shall be utterly null and void, anything to the contrary thereof in these presents notwithstanding.

PROVIDED ALWAYS NEVERTHELESS, That it shall and may be lawful for the said lessees, their successors, executors, administrators and assigns, at any time or times hereafter when so minded, to give notice in writing and file the same in the Crown Land Office, setting forth that they are desirous of surrendering this lease, and in such case, as soon as any such notice shall be so filed in the Crown Land Office, the interest and estate of the said lessees in the demised premises shall forthwith revert in Her said Majesty, and the said lessees, their executors, administrators or assigns shall thenceforth cease to have any interest therein, or to be liable under the terms and provisions of this lease for any royalty, except the royalty on gold or silver mined or obtained up to the date of said surrender, or in any other way than from quartz or other material crushed at licensed mills.

PROVIDED ALSO FURTHER, And it is the true intent and meaning of these presents that the said lessees, their executors, administrators or assigns, shall continue and remain liable under the conditions of this lease for and in respect of any matter or thing herein or hereby covenanted to be done or performed, and for which a liability shall have existed at the date of such surrender, and also shall continue and remain liable for all royalty due as last above mentioned at the date of such surrender.

IN WITNESS WHEREOF, Our Sovereign Lady the Queen has caused _____, Surveyor-General for the Province of New Bruns-

wick, to subscribe his hand and seal to this indenture, and the said lessees have subscribed their hands and seals thereto.

Signed, sealed and delivered by the said }
Surveyor-General, in the presence of } [L.S.]

By the said Lessees in }
presence of } [L.S.]

(B)

We, of , in the county of , do hereby declare that we are the legal owners under lease No. , District , dated the day of , A.D. 18 , of shares in said lease mentioned.

Given under our hands and seals this day of , A.D. 18 .

Personally appeared before me, , of , who being sworn, says that duly signed the foregoing declaration in his presence.

Sworn before me this day of , A.D.

(C)

Know all Men by these Presents, That I , of , in the County of , in consideration of dollars to me, in hand well and truly paid by of , have sold, assigned, transferred, and set over, and by these Presents do sell, assign, transfer, and set over to , of , his executors, administrators and assigns shares owned by me, under mining lease No. , in [dated , parish of , county of]¹ to have and to hold the same to the said , his executors, administrators and assigns.

¹ Inserted by 56 Vict. c. 10, s. 15, in lieu of the words "gold district."

In witness whereof I have hereunto set my hand and seal this day of , A.D. 18 .

Signed, sealed and delivered }
in presence of }

Personally appeared before me, , of , who being sworn, says that duly signed the above transfer in his presence.

Sworn before me , this }
day of , A.D. 18 . } J.P.

(D)

DISTRICT.

No. of Lease.	Date of Lease.	Date of Issue.	Date of Registry.	Description.	
To WHOM LEASED.		Shares or Parts.	To WHOM LEASED.	Shares or Parts.	
No.	By WHOM SOLD.	Shares or Parts.	Date of Registry.	Conveyance.	To WHOM SOLD.

(E)

To A. B. and C. D., lessees of certain mining areas, by virtue of a lease from Her Majesty the Queen to _____, bearing date the _____ day of _____, A.D. 18 _____ (or if the lease has been assigned, to A. B. and C. D., assignees of the lessees of certain, etc., etc., as above.)

WHEREAS, It has been represented and come to the knowledge of the Surveyor-General, that the mines and minerals in the said lease described and conveyed have been abandoned for the space of one year, have not been effectively or continuously worked, or have been worked only colourably, and that the lessee or lessees (or their assignees) have failed to comply with the terms, covenants and stipulations in the lease contained.

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You are hereby notified that the said charge or complaint will be investigated before me at my office in Fredericton, on the day of _____, in the year of our Lord one thousand eight hundred and _____

Dated the _____ day of _____, A.D. 18 ____.

 E. F., Surveyor-General.
 or G. H., Acting or Deputy
 Surveyor-General.

(F)

In pursuance of a notice duly served on the lessee or lessees (or assignees as the case may be) under a lease of certain mining areas made and being at _____ in the County of _____ made between the Queen of the one part, and A. B. and C. D. of _____, etc., of the other part, and dated the _____ day of _____, A.D. 18 ____.

I have examined into the matter of complaint against the said lessee or lessees (or assignees, etc.) for not working the said mining areas effectively and in accordance with the terms, covenants and stipulations in the said lease contained, and the true intent and meaning of the laws in such case made and provided; and on due consideration after the examination of witnesses and the facts of the case, I, being satisfied that the charge has been fully made out, have decided and declared, and by these presents do decide and declare the said mining areas and every part and parcel thereof to be forfeited.

Witness my hand at Fredericton, this _____ day of _____
 A.D. 18 ____.

E. F., Surveyor-General.
 or G. H., Acting or Deputy
 Surveyor-General.

(G)

Bond to the Queen and Her Successors in penalty of \$600.

WHEREAS, The Surveyor-General hath by a decision dated the _____ day of _____, A.D. 18 ____, decided and declared certain mining areas formerly leased to A. B. and C. D., by lease dated the _____ day of _____, A.D., 18 ____, forfeited, and the above bounden G. H., J. K., etc., have appealed against the said decision to the Supreme Court (or a Judge of the Supreme Court, as the case may be.)

Now the condition of this obligation is such that if the said G. H., J. K., etc., do and shall obey and abide by the judgment that shall be given herein, and shall well and truly pay all costs which

they may be adjudged to pay in the premises, then this obligation shall be void, otherwise the same shall remain in force.

G. H. [L.S.]

J. K. [L.S.]

Signed, sealed and delivered }
in presence of }

SCHEDULES OF FORMS TO "THE MINES AND MINERALS ACT, 1892" (NOVA SCOTIA).

A.

This Indenture, made this day of in the year of our Lord one thousand eight hundred and between the Queen's Most Excellent Majesty, of the one part, and hereinafter described as lessees, of the other part,—

Witnesseth, That in consideration of the royalties hereby reserved, and of the covenants and agreements herein contained, and on the part and behalf of the said lessees, their executors, administrators, and assigns, to be observed and performed, our Sovereign Lady the Queen, of her special grace, certain knowledge and mere motion, doth grant and demise unto the said lessees, their executors, administrators, and assigns, all that certain tract of land situate at gold district, in the county of known and described as follows, that is to say,—

An area composed of area of Class No. One, and numbered on the plan of said gold district, signed by the Commissioner of Public Works and Mines, and filed in his office, as by reference to the same will appear;

And also, all and singular the beds, veins and seams of gold and silver, gold-bearing and silver-bearing quartz, and other the gold-bearing rocks and silver-bearing rocks and minerals, and gold-bearing and silver-bearing earth, and all the gold and silver, whether in quartz, grain or otherwise, in, situate and being within the limits of the said tract, and within, under and upon the same; provided always, and it is the true intent and meaning of these presents and of the parties hereto, that nothing herein contained shall in any manner interfere with any of the rights of the owner or owners of the land in which such area is situated, but the said rights are reserved unto the said owner or owners, their heirs and assigns; and it is further agreed and understood that the said lessees shall not enter into the said area without the special leave and license of the owner or owners thereof, unless

the said lessees shall have taken proceedings in accordance with chapter 7 of the Revised Statutes, "Of Mines and Minerals."

To have and to hold the said tract of land, and the said beds, veins and seams of gold and silver and gold-bearing and silver-bearing quartz, and all other the gold-bearing rocks and silver-bearing rocks and minerals, and gold-bearing and silver-bearing earth, and gold and silver whether in quartz or otherwise, in, under, and upon the same, to the said lessees, their executors, administrators and assigns, for, during and unto the full end and term of twenty-one years, to commence and be computed from the _____ day of _____ and fully to be complete and ended. Yielding and rendering to our Sovereign Lady the Queen, her heirs and successors, quarterly and every quarter upon the first days of January, April, July and October, in each and every year during the continuance of this demise, at the office of the Commissioner of Public Works and Mines at Halifax, or of the Deputy Commissioner of Mines for the district, a royalty of two per cent. upon the gross amount of gold and silver obtained, mined, had, wrought, or gotten from or out of the said demised premises, or out of any quartz, slate, rock, mineral or earth mined, obtained, had or gotten out of the same in any other way than from quartz or other material crushed by licensed mills, at the rate of nineteen dollars per ounce, troy, for smelted gold, and eighteen dollars for unsmelted gold, and at the rate of one dollar per ounce, troy, for silver 900 fine.

And in addition yielding and rendering unto our Sovereign Lady the Queen, her heirs and successors, annually in advance on or before the date of the recurrence of the day of the date thereof, the sum of fifty cents for every area or part of an area hereby granted or demised, provided in respect of such payment that if in any year the labour required under the provisions of such chapter 7 of the Revised Statutes, "Of Mines and Minerals," shall have been performed, and percentage upon the yield thereof received therefor, and also the return thereof made to the Commissioner, a refund of said annual payment or rental shall upon application be made to the said lessee, his executors, administrators and assigns.

And the said lessees do hereby covenant, promise and agree to and with our said Sovereign Lady the Queen, her heirs and successors, that the said lessees, their executors, administrators and assigns, shall and will, well and truly pay and deliver, or cause to be paid or delivered to our Sovereign Lady the Queen, her heirs and successors, at the times and places and in the manner aforesaid, the said royalty hereby reserved under the terms and provisions of this lease.

And also, that the said lessees, their heirs, executors, administrators and assigns, shall and will during the continuance of this demise, keep or cause to be kept one or more book or books of account, wherein true entries shall be made of all such gold and gold-bearing quartz, silver and silver-bearing quartz and minerals, and other rock containing gold or silver, and all gold or silver in grain or otherwise as shall from time to time be mined, wrought, had, gotten, or obtained out of the said demised premises, and also of the names of the men actually employed in the working of the said demised premises, and the number of days' labour performed by such men, with the respective dates thereof; and also the names of the person or persons to whom any quartz or gold-bearing or silver-bearing earth or other gold-bearing or silver-bearing material raised from the demised premises has been sold or disposed of, with the price or the weight of any quartz or other gold-bearing or silver-bearing material raised from the demised premises, which may be sent to any licensed mill for crushing quartz, the name and description of the mill to which the same has been sent, and also the yield of gold and silver from such quartz or other materials as returned by the mill owner; and also that such book or books of account shall at all times be open and subject to the inspection and examination of the Commissioner of Public Works and Mines, or of the Deputy Commissioner of the district, or of the Inspector of Mines, and also of any other person or persons thereto specially appointed by the Commissioner of Public Works and Mines, for the time being; and also that the said lessees, their executors, administrators and assigns, shall, upon the first days of January, April, July and October in each and every year, during the continuance of this demise, deliver or cause to be delivered to the Commissioner of Public Works and Mines, at Halifax, or to the Deputy Commissioner of Mines for the district, a true and correct return on forms to be supplied by the Commissioner, which shall show the particulars prescribed and required by the 60th section of chapter 7 of the Revised Statutes, "Of Mines and Minerals," verified by an affidavit of some one or more suitable person or persons employed in or about the working or management of the mines hereby granted and demised, made before the Commissioner of Mines, or a deputy, or a justice of the peace, and shall in all respects obey, abide by, perform and fulfil all the requirements of the said chapter.

And likewise, that the said lessees shall annually cause to be employed on the demised premises, so many men as shall make the whole labour performed thereon during the year, in opening and working the said mines, amount in all to the number of days' labour; and also shall and will, during the continuance of this grant

or demise, work the said mines in a good and workmanlike manner, and shall and will from time to time, and at all times during the continuance of this grant or demise, well and effectually maintain and support all and every the working-pits, shafts, levels, drifts and watercourses of and belonging to the said mines, with all such timber and deals, and other materials as shall be requisite or necessary for that purpose, and so as to prevent the same and the roofs of the said mine from falling in, or being otherwise damaged; and shall and will at the end or other sooner determination of the said term, peaceably and quietly yield and deliver unto the Commissioner of Public Works and Mines, or the Deputy Commissioner of the district, or such other person or persons as the Lieutenant-Governor for the time being shall appoint under his sign manual to receive and take possession thereof, all the said mines and all and singular other the premises hereinbefore mentioned, except such furnaces, engines, mills, forges, foundries, railroads, implements, houses and buildings as shall not be attached to the freehold, in such good order, plight and condition as fair-wrought mines ought to be left, with such timber, deals and other material as aforesaid (such mines as during the term hereby granted shall be abandoned by reason of their being unproductive only excepted). Provided always, and it is hereby agreed and declared, and the said lessees, for themselves, their heirs, executors, administrators and assigns, do accept this grant or demise under the condition, that in case default shall be made by the said lessees, their executors, administrators or assigns, in keeping such book or books of account, or in making such entries therein, or in delivering such affidavit or affidavits as aforesaid, or in payment of the said royalties hereby reserved for the space of ten days after the periods hereinbefore appointed for paying the same, or in the keeping annually employed on the demised premises the amount of labour herein above specified; or if the affidavits hereinbefore set forth and required to be made shall be false and fraudulent, or any other covenant herein contained shall not be kept and observed, then and in every or any or either of the said cases these presents and all and every the powers and privileges hereby granted shall be utterly null and void, anything to the contrary thereof of these presents notwithstanding.

Provided always, nevertheless, that it shall and may be lawful for the said lessees, their executors, administrators and assigns, at any time or times hereafter when so minded, to give notice in writing and file the same in the office of the Deputy Commissioner of Mines of the district, or of the Commissioner of Public Works and Mines in any district where there is no deputy, setting forth that they are desirous

of surrendering this lease ; and in such case, so soon as any such notice shall be so filed in the office of the Commissioner of Public Works and Mines, the interest and estate of the said lessees in the demised premises shall forthwith revert in Her said Majesty, and the said lessees, their executors, administrators or assigns shall thenceforth cease to have any interest therein, or be liable under the terms and provisions of this lease for any royalty, except the royalty on gold or silver mined and obtained up to the date of said surrender, or in any other way than from quartz or other material crushed at licensed mills.

Provided also further, and it is the true intent and meaning of these presents, that the said lessees, their executors, administrators and assigns shall continue and remain liable under the conditions of this lease for and in respect of any matter or thing herein or hereby covenanted to be done or performed, and for which a liability shall have existed at the date of such surrender, and also shall continue and remain liable for all royalty due as last above mentioned at the date of said surrender.

In witness whereof our Sovereign Lady the Queen has caused
 , Commissioner of Public Works and Mines
 for the Province of Nova Scotia, to subscribe his hand and seal of office to this indenture, and the said lessees have subscribed their hands and sals thereto.

Signed, sealed and delivered, by the said	}	[L. S.]
Commissioner of Public Works and		
Mines, in the presence of		[L. S.]
By the said lessees in the presence of		

B.

We, of in the county of , do
 hereby declare that we are the legal owners under lease No. ,
 district dated the day of A.D. 18 , of
 shares in said lease mentioned.

Given under our hands and seals this day of
 A.D. 18 .

Personally appeared before me of who, being
 sworn, says that duly signed the foregoing declaration
 in his presence.

Sworn before me at	this	}
day of	A.D. 189	
J.P.		

C.

Know all men by these presents, that I _____ of _____
 in the county of _____ in consideration of _____ dollars
 to me in hand well and truly paid by _____ of _____ have
 sold, assigned transferred, and set over, and by these presents do sell,
 assign, transfer and set over to _____ of _____ his execu-
 tors, administrators and assigns _____ shares owned by me under
 mining lease No. _____ in gold district _____ To have and to
 hold the same to the said _____ his executors, administra-
 tors and assigns.

In witness whereof I have hereunto set my hand and seal this
 day of _____ A.D. 18 _____

Signed, sealed and delivered)
 in the presence of)

Personally appeared before me _____ of _____ who,
 being sworn says that _____ duly signed the above transfer in
 his presence.

Sworn before me at _____ this _____)
 day of _____ A.D. 18 _____)
 J.P.

D.
 DISTRICT.

No. of Lease.	Date of Lease.	Date of Issue.	Date of Registry.	Description.	
To whom Leased.	Shares or parts.	To whom Leased.	Shares or parts.		
No.	By whom sold.	Shares or parts.	Date of Registry.	Conveyance.	To whom sold.

E.

To A. B. and C. D., lessees of certain mining areas, by virtue of a lease from Her Majesty the Queen to _____ bearing date the _____ day of _____ A.D. 18 _____ (or, if the lease has been assigned to A. B. and C. D., assignees of the lessees of certain, etc., as above).

Whereas it has been represented and come to the knowledge of the Commissioner of Public Works and Mines, that the mines and minerals in the said lease described and conveyed have been abandoned for the space of one year, have not been effectively or continuously worked, or have been worked only colorably, and that the lessee or lessees (or their assignees) have failed to comply with the terms, covenants and stipulations in the lease contained.

You are hereby notified that the said charge or complaint will be investigated before me, at my office in the Province Building, at Halifax, on the _____ day of _____ A.D. 18 _____.

E. F.

Commissioner of Public Works and Mines.

F.

In pursuance of a notice duly served on the lessee or lessees (or assignees, as the case may be), under a lease of certain mining areas, situate and being at _____ in the county of _____ made between the Queen, of the one part, and A. B. and C. D. of _____ etc., of the other part, and dated the _____ day of _____, A.D. 18 _____. I have examined into the matter of complaint against the said lessee or lessees (or assignees, etc.), for not working the said mining areas effectively and in accordance with the terms, covenants and stipulations in the said lease contained, and the true intent and meaning of the laws in such case made and provided; and on due consideration, after the examination of witnesses and the facts of the case, I, being satisfied that the charge has been fully made out, have decided and declared, and by these presents do decide and declare, the said mining areas and every part and parcel thereof to be forfeited.

Witness my hand at Halifax, this _____ day of _____, A.D. 18 _____. ,

E. F.,

Commissioner of Public Works and Mines,
or F. M., Deputy Commissioner of Mines.

G.

Bond to the Queen and Her Successors in Penalty of \$600.

Whereas, the Surveyor-General hath by a decision dated the day of , A.D. 18 , decided and declared certain mining areas formerly leased to A. B., and C. D., by lease dated the day of , A.D. 18 , forfeited, and the above bounden G. H., J. K., etc., have appealed against the said decision to the Supreme Court (or a Judge of the Supreme Court, as the case may be).

Now the condition of this obligation is such that if the said G. H., J. K., etc., do and shall obey and abide by the judgment that shall be given herein, and shall well and truly pay all costs which they may be adjudged to pay in the premises, then this obligation shall be void, otherwise the same shall remain in force.

Signed, sealed and delivered
in presence of

}

G. H. [L.S.]
J. K. [L.S.]

H.

*Nova Scotia Act (1892) cap. 1.**Form of Oath re Survey.*

I (A. B.) of , in the county of (occupation), do swear that I will well and faithfully perform the duties I may be called upon to perform as (chainman or whatever the employment 'may be) in making the survey of property held under (lease or license) by (describe the property proposed to be surveyed). So help me God.

Sworn to before me at

in the county of

this day of , 18 .)

Surveyor.

FORM OF NOTICE OF EXPLOSION OR ACCIDENT TO BE SENT TO THE
DEPARTMENT OF MINES.

Name of Mine

Date

To the Honorable the Commissioner of Public Works and Mines,
Halifax, N.S.:

SIR,—In pursuance of chapter 8 of the Revised Statutes "Of the Regulation of Mines," I beg to give you notice that an ¹ has occurred at this mine, of which the following are the particulars:

Place where the accident occurred

Date of the accident

Character of the accident

If from explosion, whether of gas, powder or }
any steam boiler. }

Number, ages and names of persons killed

Number and names of persons }
injured seriously }

Number and names of persons }
injured slightly ² }

Number and relation of persons dependent on persons killed

I am, Sir,

Your obedient servant,
(Signature.)

¹ "Explosion" or "Accident."

² In case of any explosion.

SCHEDULE OF FORMS TO "THE MINERAL ACT" (BRITISH COLUMBIA).

FORM A.

Location Notice.

Mineral Claim.

I, _____, have this day located this ground as a mineral claim, to be known as the _____ Mineral Claim, _____ feet in length by _____ feet in breadth. The direction of No. 2 post is _____, and _____ feet of this claim lie to the right and _____ feet to the left of the location line.

Dated this _____ day of _____, 189 .

Take care to number the posts 1, 2.
making the initial post 1.

1897, c. 28, s. 23.

FORM B.

Record of Mineral Claim.

Mineral Claim.

No. of certificate,

Located by—

{ Set out the name of claim and
number of receipt form of pay-
ment of the record fee of each
locator, and the No. of each
locator's Free Miner's Certificate
opposite such name. }

The claim is situate

The direction of the location line is

The length of the claim is feet.

The claim was located on the day of , 189 .

Recorded s day of , 189 .

Mining Recorder.

[If the stakes are not on the location line, comply with section 18.]

1897, c. 28, s. 23.

FORM C.

Record of Partnership Mineral Claim.

Mineral Claim.

Located in the partnership name of

The members of the partnership, and the Nos. of their respec-
tive free miner's certificates are—

The receipt form of payment of the record fee.

The claim is situate

The direction of the location line is

The length of the claim is feet.

The claim was located on the day of , 189

Recorded this day of , 189 .

Mining Recorder.

[If the stakes are not on the location line, comply with section 18.]

1896, c. 34, Form C.

FORM D.

Application for Certificate of Work.

AFFIDAVIT.

I, _____, of _____, in the district of _____ free miner, make oath and say:—

I have done, or caused to be done, work on the Mineral Claim, situate at _____, in the District of _____, to the value of at least one hundred dollars, since the _____ day of _____, 189 . The following is a detailed statement of such work:—

[Set out full particulars of the work done in the twelve months in which such work is required to be done by section 24.]

Sworn, etc.

[This affidavit may be made by an agent, and can be altered to suit circumstances.]

1896, c. 34, Form D.

FORM E.

Certificate of Work.

(Name of claim) _____ Mineral Claim.

This is to certify that an affidavit setting out a detailed statement of the work done on the above claim since the _____ day of _____ 189 , made by _____, has this day been filed in my office, and in pursuance of the provisions of the Act in that behalf, I do now issue this certificate of work in respect of the above claim to

Dated _____

Gold Commissioner or Mining Recorder.

1896, c. 34, Form E.

FORM F.

Certificate of Improvements.

NOTICE.

Situate in the _____ Mining Division of _____ Mineral Claim.
District.

Where located

Take notice that I _____, free miner's certificate No. _____ intend, sixty days from the date hereof, to apply to the Mining Recorder for a certificate of improvements, for the purpose of obtaining a Crown grant of the above claim.

And further take notice that action, under section 57, must be commenced before the issuance of such certificate of improvements.

Dated this day of , 189 .
1896, c. 34, Form F.

FORM G.

Application for Certificate of Improvements.

APPLICANT'S AFFIDAVIT.

I, _____, of _____, in the District of _____
make oath and say:—

1. I, _____, the recorded holder, and am in undisputed possession of the _____ Mineral Claim, situated at _____, in the District (or Division) of _____.

2. I, _____, have done, or caused to be done, work on the said claim in developing a mine to the value of at least five hundred dollars, full * particulars whereof are hereunto annexed and marked "A."

3. I, _____, found [specify the particular mineral and whether in a vein, lode or deposit] within the limits of the said claim.

4. I, _____, had the claim surveyed by _____, who has made three plats of the said claim.

5. I, _____, placed one such plat on a conspicuous part of the land embraced in such plat on the _____ day of _____, 189 _____.

6. I, _____, posted a copy of the notice hereunto annexed, and marked "B," at the same place as said plat is posted, on the _____ day of _____, 189 _____, and another copy on the Mining Recorder's office at _____ on the _____ day of _____, 189 _____, which said notice and plat have been posted, and have remained posted, for at least sixty days concurrently with the publication of the said notice in the British Columbia Gazette.

7. I, _____, inserted a copy of the said notice in the British Columbia Gazette, where it first appeared on the _____ day of _____, 189 _____, and in the _____, a newspaper published in the Province and circulating in the district in which the said claim is situated, where it first appeared on the _____ day of _____, 189 _____, and was continuously published for sixty days concurrently with the publication of the said notice in the British Columbia Gazette prior to the date of this affidavit.

8. I, _____, deposited a copy of the field-notes and plat in the Record Office at _____, on the _____ day of _____, 189 _____, and they remained there for reference for sixty days concurrently with the publication of the said notice in the British Columbia Gazette.

Sworn and subscribed to _____, }
 at _____, this _____ day }
 of _____ 189 _____, before me }

FORM H.

Certificate of Improvements.

Mineral Claim.

This is to certify that _____, of _____, in the District of _____, free miner's certificate No. _____, has proved to my satisfaction that he has complied with all the provisions of the "Mineral Act" to entitle him to a certificate of improvements in

respect of the Mineral Claim, situate at _____,
in the District of _____; and in pursuance of the provisions of
the said Act I do now issue this certificate of improvements, in respect
of the above claim, to

Dated _____

Gold Commissioner.

This certificate will become void unless a Crown grant is applied
for within three months from its date.

[Form may be altered to suit circumstances.]

1896, c. 34, Form H.

FORM I.

Mining Recorder's Certificate.

Mining Division.
District.
Mineral Claim.

Date located _____

Date recorded, _____

To

SIR,—I herewith enclose the following documents relating to
your application for a certificate of improvements to the above claim:—

Affidavit of _____, applicant (Form G);

Copy of plat of claim;

Copy of surveyor's field-notes.

And I hereby certify that _____ has published a notice of his
intention to apply for a certificate of improvements for sixty days in
the British Columbia Gazette, from the _____ day of _____,
189____, and _____ newspaper from the _____ day of _____ 189____.
That during the above period a notice in accordance with section 36,
sub-section (d), has been posted, and a copy of the field-notes and plat
of the said claim deposited for reference in my office, and that no
notice of any action having been commenced against the issuance of
a certificate of improvements to the said claim has been filed in this
office up to this date.

The recorded owner of the said claim at this date is _____.

Dated _____, 189____.

Mining Recorder.

1896, c. 34, Form I.

FORM J.

Mill-Site.

NOTICE.

Take notice that I, _____, of _____, in the District of _____, free miner's certificate No. _____, intend, sixty days from the date hereof, to apply for _____ acres of land for a mill-site, situate at _____, in the district of _____, as a mill-site.

Dated _____

1896, c. 34, Form J.

FORM K.

Mill-Site.

AFFIDAVIT OF APPLICANT PRIOR TO LEASE.

I, _____, of _____, in the District of _____, free miner, make oath and say:—

1. I have marked out the land required by me for a mill-site, by placing a legal post at each corner.

2. I have posted a notice on each such post, and on the Mining Recorder's Office at _____, a copy of which notice is hereunto annexed, and marked "A."

3. The said land is not known to contain minerals, and is not, to the best of my knowledge and belief, valuable as mineral land.

1896, c. 34, Form K.

FORM L.

Lease of Mill-Site.

This indenture, made the _____ day of _____, 189____, between _____, the Gold Commissioner for the District of _____ (hereinafter called the lessor), of the one part, and _____, of _____, in the District of _____, free miner (hereinafter called the lessee), of the other part, wit-

nesseth, that in exercise of the powers vested in him by the "Mineral Act," he, the said lessor, doth hereby demise unto the said lessee, his executors, administrators, and assigns, all that

[Describe the Mill-Site.]

for the term of one year from the date hereof, subject to the provisions and conditions of the "Mineral Act" relating to mill-sites.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, sealed, and delivered

1896, c. 34, Form L.

FORM M.

Mill-Site.

AFFIDAVIT OF APPLICANT PRIOR TO CROWN GRANT.

I, _____, of _____, in the District of _____
free miner, make oath and say:—

1. I am the lawful holder of the mill-site mentioned in indenture of lease dated and made between

2. During the year mentioned in such lease as the term thereof, I put or constructed works or machinery, for mining or milling purposes, on the said mill-site, of the value of at least five hundred dollars.

Sworn, etc.

1896, c. 34, Form M.

FORM N.

Mill-Site.

CERTIFICATE OF IMPROVEMENTS.

This is to certify that _____ has put or constructed works or machinery, for mining or milling purposes, to the value of at least five hundred dollars, on the mill-site described in and demised by indenture dated the _____ day of _____, 189____, and made between _____ during the existence of such lease.

Gold Commissioner.

1896, c. 34, Form N.

FORM O.

Tunnel or Drain License.

To all whom it may concern:—

Take notice that _____, a free miner and the owner of _____, having given security to the amount of _____ for any damage he may do, has this day obtained a license from me to run a tunnel (or drain) from _____ to his said claim (or mine).

The said license is granted on these express conditions:—

[Set out conditions, if any.]

Dated _____

Gold Commissioner.
1896, c. 34, Form O.

FORM P.

Mill-Site.

APPLICATION FOR CROWN GRANT.

To the Mining Recorder at _____

SIR,—I enclose herewith the sum of _____ dollars and the under-mentioned documents:—

Lease of mill-site.
Plat of mill-site.
Surveyor's field-notes.
Certificate of improvements.
Affidavit of applicant.

And I now apply for a Crown grant of the mill-site demised by the above-mentioned lease.

Yours respectfully,
1896, c. 34, Form P.

[Forms Q and R, repealed by 1897, c. 28, s. 19.]

FORM S.

For a Full Claim.

Mining Division,

District.

I, A. B., of _____, in the _____ Mining Division
of _____ District, free miner, make oath and say:—

1. I am the holder of Free Miner's Certificate No. _____ dated
day of _____, 18____, and issued at _____

2. On the _____ day of _____, 18____, I located
the _____ Mineral Claim, situated [*heredescribe position of claim
as near as possible, giving the name or names of any mineral claim or
claims it may join.*]

3. I have placed a No. 1 and a No. 2 and a discovery post of
the legal dimensions on the said claim, with the legal notices on
each post.

4. I have written on the No. 1 post the following words:—

5. I have written on the No. 2 post the following words:—

6. That I have found mineral in place on the said claim.

7. That I have marked the line between No. 1 and No. 2 posts
as required by section 16 of this Act.

8. That to the best of my knowledge and belief the ground com-
prised within the boundaries of the said claim is unoccupied by any
other person as a mineral claim; that it is not occupied by any build-
ing or any land falling within the curtilage of any dwelling-house,
or any orchard, or any land under cultivation, or any Indian reserva-
tion.

NOTE.—This declaration may be made by an agent.

1896, c. 34, Form S.

FORM T.

For Fractional Claim.

Mining Division,

District.

I, A. B., of _____, in the _____ Mining Division
of _____ District, free miner, make oath and say:—

1. I am the holder of Free Miner's Certificate No. _____ dated
day of _____, 18____, and issued at _____

2. On the _____ day of _____, 18____, I located the _____ the _____ fractional mineral claim, situated _____
3. This is a fractional claim bounded on the north by _____, on the south by _____, on the east by _____, and on the west by _____, and is more particularly described on the sketch plan on the back of this declaration.
4. I have placed a No. 1 and a No. 2 and a discovery post of the legal dimensions on the said claim, with the legal notices on each post.
5. I have written on the No. 1 post the following words:—
6. I have written on the No. 2 post the following words:—
7. I have found mineral in place on the said fractional claim.
8. I have marked the line between No. 1 and No. 2 posts as required by section 16 of "The Mineral Act."
9. That to the best of my knowledge and belief the ground comprised within the boundaries of the said fractional claim is unoccupied by any other person as a mineral claim; that it is not occupied by any building or any land falling within the curtilage of any dwelling-house, or any orchard, or any land under cultivation, or any Indian reservation.

NOTE.—This declaration may be made by an agent.

1896, c. 34, Form T.

SCHEDULE OF FORMS REFERRED TO IN THE "PLACER MINING ACT" (B. C.).

A.

Location Notice.

[Set out name of claim]

Placer Claim.

Take notice that [set out the name of each locator] have this day located this ground as a placer claim (or, as a set of _____ placer claims), to be known as the _____ Placer Claim, _____ feet in length. Its general direction is _____

Dated _____

[Mark one post "Initial Post," and fix this notice on that post. If a set of claims is located only one notice is requisite, but there must be an initial post for each claim.]

B.

Record of a Placer Claim.

[Name of claim] Placer Claim.
 Located by No. of certificate,
 [Set out the name of each locator, and the number of each locator's free miner's certificate, opposite such name.]
 The claim is situate
 The length of the claim is feet.
 Recorded for years.
 Located on the day of , 18 .
 Recorded this day of , 18 .
 1891, c. 26—B.

C.

Re-record of a Placer Claim.

[Name of claim] Placer Claim.
 [Set out the name of each holder of an interest in such claim, and the number of each holder's free miner's certificate.]
 The claim is situate
 Re-recorded for years, to commence to run from the
 day of , 18 .
 Re-recorded this day of , 18 .
 1891, c. 26—C.

D.

Record of a Set of Placer Claims.

[Set out the name of each claim.]
 Located in the partnership name of
 The members of the partnership and the numbers of their respective free miner's certificates are:—
 The claims are situate
 The length of each claim is feet.
 Recorded for years.
 Located on the day of , 18 .
 Recorded on this day of , 18 .
 1891, c. 26—D.

E.

Tunnel or Drain License.

To all whom it may concern:—

Take notice that _____, a free miner and the owner of _____, having given security to the amount of _____ for any damage he may do, has this day obtained a license from me to run a tunnel (or drain) from _____ to his said claim. The said license is granted on these express conditions: [Set out conditions, if any.]

Dated _____

Gold Commissioner.

1891, c. 26—E.

F.

Application for Public Drain Grant.

We [Set out names in full of each applicant], the undersigned free miners, do hereby apply for a public drain grant, to enable us to construct a drain [Set out nature and extent of proposed drain], and to charge the following tolls to all persons using such drain [Set out proposed tolls], such grant to run for _____ years, and we do further apply for the following privileges to be included in such grant:—

[Set out privileges sought to be acquired.]

Dated _____

To the Gold Commissioner.

[Post notice on ground and on Mining Recorder's office, setting out application.]

1891, c. 26—F.

Scale of Fees to be Charged.

For every free miner's certificate issued to an individual....	\$5 00
For every free miner's certificate issued to a joint stock company,	
(a) Having a nominal capital of \$100,000 or less..	50 00
(b) Having a nominal capital exceeding \$100,000..	100 00
Every substituted certificate	1 00
Recording any claim (for each year).....	2 50
Re-recording any claim (for each year).....	2 50
Recording any "lay-over," or every other record required to be made in the "Record Book".....	2 50

Recording every abandonment, including the memorandum to be written on the record.....	\$2 50
For any other record made in the "Record of Abandonments"	2 50
For recording every affidavit, where the same does not exceed three folios of 100 words.....	2 50
For every folio over three, 30 cents per folio.	
The above rate shall be charged for all records made in the "Record of Affidavits."	
For all records made in the "Record of Conveyances," where the same do not exceed three folios.....	2 50
For every folio over three, a further charge of 30 cents per folio.	
For all copies or extracts from any record in any of the above-named books, where such copy or extract shall not exceed three folios, per copy.....	2 50
Where such copies or extracts exceed three folios, 30 cents per folio for every folio over three.	
For filing any document	1 00
For every lease	5 00

APPENDIX III.

GLOSSARY OF MINING TERMS.

- ABSOLUTE PRESSURE.** The pressure reckoned from a vacuum.
- ABSOLUTE TEMPERATURE.** The temperature reckoned from 459 F., or 273 C.
- ACCESSORY MINERALS.** That is, minerals found in crystalline rocks in such small proportions that their absence would not alter the lithological name of the rock.
- ACEQUIA.** A ditch. Spanish.
- ACID ROCK.** A rock containing much silicic acid (free silica), as opposed to basic rock, in which the alkaline bases predominate.
- ADIT.** The water level of a mine.
- ADVENTURER.** Original promoter, or speculator in a mining enterprise.
- AEROLITES.** Meteoric masses of metallic or other mineral substances which have fallen to the earth through the air. The metallic aerolite consists principally of metallic iron, nickel and chrome; and the non-metallic or crystalline rocks, resembling greenstone; others consist of mixtures of these.
- AEROPHONE.** A respirator in the form of a tank receiving the exhalations from the lungs, which contain chemicals designed to revive the air and render it fit for breathing. It is used by rescuers after mine accidents.
- AFTER-DAMP.** Another name for **choke-damp**, or **carbonic acid**, as occurring in mines after an explosion of "fire-damp," or light carburetted hydrogen.
- AGGLOMERATE.** A term used by Sir Charles Lyell to designate accumulation of angular fragments of rock thrown up by volcanic eruptions.
- AIR PIPES OR BOXES.** Tubes or pipes for ventilation.
- AIR-STACK.** A stack or chimney built over a shaft for ventilation.
- AITCH-PIECE.** That part of the pipes of a forcing-pump in which the valves are placed.

- ALBITE.** Soda felspar; a silicate of alumina and soda. Crystallization, triclinic.
- ALLUVIUM.** Recent aqueous deposits of silt or mud.
- ALUMINA.** The pure plastic principle of clay. Alumina is an oxide of the metal aluminum; aluminum 12 and oxygen 8.
- AMBER.** A fossil gum or gum resin.
- ALUMINIUM** is the English form, and agrees in termination with most of the metals whose names end in "um"—as magnesium, calcium, sodium, etc.
- AMALGAM.** A combination of mercury with another metal, especially gold or silver.
- AMALGAMATED CLAIMS.** Claims adjoining one another, which have been thrown temporarily or permanently into one claim for more economical working.
- AMALGAMATION.** The process of uniting mercury with gold, silver, etc.
- AMORPHOUS.** Without form; applied to rocks and minerals having no definite structure.
- AMPHIBOLITE.** See hornblende.
- AMYGDALOID.** An igneous rock containing almond-shaped kernels of minerals, such as quartz or agate calcspar, etc., which have resulted from the filling up of vesicular cavities that originally existed in these rocks, due to the expansion of gases in them while still hot and in a soft condition.
- ANEMOMETER.** An appliance for measuring the velocity of an air-current.
- ANORTHITE.** Lime-felspar; a silicate of alumina and lime; crystallization, triclinic.
- ANTHRACITE.** A variety of coal from which nearly all the bitumen has been driven off by a process of natural coking, leaving a fixed carbon and ash.
- ANTICLINAL.** A fold of the rock or strata convex upward.
- APATITE.** Mineral phosphate of lime. It is usually of various shades of green, and bluish green, brownish red and light gray. It occurs in grains and small crystals in nearly all trappean rocks in granites, gneiss, etc. In the Ottawa Valley and the region between Kingston and Ottawa it occurs in economic quantities, associated with pyroxene rock and crystalline limestone. The first grade for export has the refuse rock removed, so that the

mass contains eighty per cent. and upwards of pure phosphate. Apatite represents the fifth degree in the scale of hardness of minerals.

APEX. The edge of a vein nearest to the surface.

AQUEOUS ROCKS. See sedimentary.

ARRASTRA. A primitive contrivance for the reduction and amalgamation of gold or silver in ores. It consists of a shallow, tub-shaped enclosure, usually about twelve feet in diameter, formed of either iron or stone. An upright shaft fixed to pivots above horses or mules are attached. Blocks of stone attached by thongs or chains to these arms are dragged around upon the stone pavement or iron plate which forms the bottom, in such a way that the front of the lower surface of each block is slightly raised, so that it may pass over the finely broken ore and triturate it upon the bottom. After grinding the ore to a pulp, sufficient mercury is added to amalgamate all the precious metal supposed to be present, and the grinding process is continued for some time.

ARCH. A piece of ground left standing in a lode near the shaft.

ARCHEAN. A term proposed by Dana and largely adopted for the Azoic age, or what had formerly been called the primitive rock the lowest of the five grand divisions or periods of geological time. They embrace the Laurentian and Huronian systems, and are sometimes also called the pre-Cambrian rocks.

ARENACEOUS. (Lat. arena, Sand) Sandy or fragmental rocks.

ARGENTIFEROUS. Carrying silver; silver-bearing.

ARGENTITE. Sulphide of silver; contains 86½ per cent. of silver and 13½ of sulphur; heavy blackish gray in color; malleable, easily cut by a knife; it is an important ore of silver, common in the Thunder Bay silver region.

ARGILLACEOUS. Containing clay, either soft or hardened, as in shale, slate, argillite, etc.

ARRAGE OR ARRIS. A sharp point or corner.

ARSENIC. The element, as a mineral, usually called native arsenic.

ARTESIAN WELLS. Named from Artois, in France, where the system has been largely followed though borings of the same kind have been made in the East from a very early date.

ASBESTOS. A fibrous, flexible variety of hornblende. Chrysotile, a fibrous variety of serpentine, is also called asbestos. It fuses at a lower temperature, but for steam-packing answers the same purpose as true asbestos.

ASCENSION THEORY. The theory referring the filling of fissures to matter from below.

ASSAY. A test of the mineral contained in a larger mass by extracting and weighing the product of a sample.

ASSAYING. Finding or determining the proportion of metals in ores by smelting in the way appropriate to each. Gold and silver require an additional process called cupelling, for the purpose of separating them from the base metals.

ASSESSMENT WORK. The annual labor required to hold a claim.

ATTAL. Waste rock.

AURIFEROUS. Gold-bearing.

AZOIC. Without life. Applied to all the ancient crystalline rocks, because they show no evidence of the existence of life on the earth at the time of their formation.

B.

BABY. A balance weight near the end of a pit rope.

BACK. The portion of a lode lying between a level driven in a lode and the surface.

BACK-PRESSURE. The loss expressed in pounds per square inch due to getting the steam out of the cylinder after it has done its work.

BAL. A mine; more properly, the surface of a mine.

BALANCE-BOB. A heavy triangular truss, the long horizontal arm of which supports a weight at one end ballasted to balance the weight of pump-rods at the other.

BALN-STONE. Roof-stone.

BAND. Rock interstratified with coal or any mineral.

BANKSMAN. The loader of the coal.

BANK. The surface at the pit's mouth.

BANK-CLAIM. A claim which includes the bank of a river or creek.

BANK-RIGHT. Privilege of diverting to a bank claim.

BAR-DIGGINGS. Gold washing on river bars.

BAR. A band of hard rock crossing a lode.

BARRIER. A thick wall of coal left between two mines.

BARRIERS. Posts of unworked gangue or coal left to prevent drainage from mine to mine.

BARRIER-PILLARS. Pillars larger than the ordinary left at stated intervals to prevent the crushing of the roof from extending beyond the section enclosed by them.

- BAR-TIMBERING.** A system of supporting a tunnel roof by long cross-bars while the whole lower tunnel-core is taken out, leaving an open space for the masons to run up the arches. Under certain conditions the bars are withdrawn after the masonry is completed, otherwise they are bricked in and not drawn.
- BARYTES.** Sulphate of baryum; also called heavy spar, from its high specific gravity. When finely ground it is used to adulterate white-lead paint. It occurs as a vein-stone, and is abundant in some of the veins between Thunder Bay and Pigeon Point.
- BASALT.** Igneous rocks having a columnar structure like that of the Giant's Causeway in Ireland. Lithologically, basalt is closely allied to diabase.
- BASE METALS.** All metals except gold, silver, mercury, and the platinum group, which are termed noble metals.
- BASIN.** In geology, where strata dip from all sides towards a central point or line; also called a synclinal or trough as opposed to anticlinal or dome, where the rocks dip away from a common line or point.
- BASIC ROCK.** A rock in which the alkaline bases predominate over the free silica.
- BASSET.** Outcrop of a lode or stratum.
- BATING.** Lowering a drift or lode.
- BATTERY.** A number of stamps in a mill are called a battery (usually five).
- BEARERS.** Supports to engine pumps in the shaft.
- BEATER.** A tool for charging a blast.
- BEARING-UP STOP.** A partition of brattice or plank that serves to conduct air to a face.
- BECHE.** A boring-tool.
- BED.** Stratum or layer.
- BED-CLAIM.** A mining claim on the bed of a stream or river.
- BED-ROCK.** The stratum immediately underlying loose or drifted matter.
- BELLAND.** Dusty lead ore.
- BELL AND HOPPER.** The instrument through which ore, fuel and flux are charged into the blast furnace.
- BELLIES.** A swelling mass of ore in a lode.
- BELT.** Name given to a band of strata and to groups of strata distinguished by similarity of mineral characteristics. See "Zone."
- BENCH.** The divisions of a coal-bed caused by seams of clay or slate; also used to express the artificial divisions in the process of mining; also a terrace at the outcrop of a seam.

- BENK.** The face of the coal in work.
- BINA.** Hard clayey substance.
- BILLET.** A small bloom.
- BIND.** Sandstone or hard shale.
- BIT.** The steel point of a borer or drill.
- BITUMEN.** Mineral pitch; it is composed of carbon and hydrogen.
- BITUMINOUS.** Containing disseminated bitumen or its elements, which may generally be distinguished by the dark color or the odor.
- BITTER SPAR.** Also called pearl spar: the crystalline form of carbonate of lime and magnesia; the pure form of dolomite. It consists of one part, or equivalent, of carbonate of lime and one of carbonate of magnesia.
- BLACK-DAMP.** See "Choke-damp."
- BLACK SAND.** Commonly applied to all the black and heavy minerals which usually accompany gold.
- BLACK-LEAD.** So called from the resemblance of the finer kinds to lead, only blacker. See Graphite.
- BLACK TIN.** Tin ore ready dressed for smelting.
- BLANCH.** Lead ore mixed with other minerals.
- BLANKET TABLE.** An inclined plane or table covered with green baize and placed at the end of a ripple board table to catch the fine gold, pyrites, etc.
- BLAST.** A strong force or current of air.
- BLAST-FURNACE.** A smelting furnace into which large volumes of air are forced by a mechanical means under high pressure, known as the blast. In the consumption of coal it takes up the oxide of iron and leaves the metallic iron free.
- BLENDE.** Sulphide of zinc.
- BLIND CREEK.** A line of drainage in which water flows only during very wet weather.
- BLIND DRIFT.** A horizontal passage in the mine not yet connected with the other working.
- BLIND LEAD, OR BLIND LODE.** A vein having no outcrop.
- BLOCK-CLAIM.** A claim bounded by right lines fixed and defined by pegs, posts, or trenches at each angle of the claim.
- BLOCK COAL.** Coal that breaks freely into rectangular blocks.
- BLOCK TIN.** Metallic tin.
- BLOOD-STONE.** A dark green variety of chert or jasper, with small red spots.
- BLOOM.** A roughly prepared mass of iron intended to be drawn out under the hammer or between rollers into bars.

- BLOSSOM.** A coloured vein-stone detached from an outcrop.
- BLOWER.** A discharge of gas from coal; also a fan for forcing air into a
- BLOW-OUT** ore or rock which has been displaced from a lode.
- BLOW-I** An instrument by which a current of air is driven through the flame of a lamp or gas-jet.
- BLUFF.** Blunt. A high bank or hill with precipitous front.
- BOB.** See Balance-bob.
- BOG-IRON ORE.** A spongy variety of hydrated oxide of iron or limonite. Found in layers and lumps on level, sandy soils which have been covered with swamp or bog.
- BONANZA.** Fair weather at sea; a large body of paying ore.
- BOOMING.** A kind of placer mining where the water is accumulated in a dam and let out at intervals so as to utilize its cutting power in the form of a torrent.
- BOOM-DITCH.** (1) The ditch from the dam used in booming; (2) A slight channel cut down a declivity into which is let a sudden head of water intended to cut to bed rock, and prospect for the apex of any underlying lode.
- BORRASKA.** Spanish word for adversity; name given to a mine when unproductive.
- BOULDER.** Large, loose, rounded masses of stone detached from the parent rock.
- BOULDER-CLAY.** The stiff, hard and usually stratified clay of the drift or glacial period which contains boulders scattered through it; also called "till," hard-pan, drift-clay or boulder-drift.
- BOUZE.** Undressed lead ore.
- BRASSES.** Sulphate of iron in coal.
- BRAT.** A thin bed of coal mixed with pyrites or carbonate of lime.
- BRATTICE.** A canvas or plank partition nailed to posts longitudinally within a level or shaft to divide the same into two compartments for the purpose of separating two air-currents.
- BRAZIL.** Iron pyrites.
- BREAK THROUGH.** A narrow passage cut through a pillar connecting mine chambers.
- BREAKES.** Fissures in old coal workings.
- BREAKINGS.** The poor part of ore ready for being crushed.
- BREAST.** The working face or front of a drift, tunnel.
- BRECCIA.** Rock formed of angular fragments cemented together.

- BRITTLE SILVER.** Staphanite. Sulphide of antimony and silver, containing 68.5 per cent. silver, with the antimony variable. Sometimes contains iron, copper and arsenic; variable in colour, hardness and specific gravity.
- BROACHING.** Trimming or straightening a working.
- BROOD.** Impure matter mixed with ore.
- BROWN COAL.** A name given to lignite.
- BROWSE.** Ore imperfectly smelted, mixed with cinder and clay.
- BRYLE.** Surface indications of a vein in decomposed mineral matter.
- BUDDLE.** A circular tub, pit, or inclosure, for separating finely divided ores from the waste by means of water.
- BUDDLES.** Machines for washing slimes.
- BUGGY.** A small mine-waggon for conveying coal from face to gangway.
- BURR-STONE.** A porous, silicious rock used for mill-stones. The kinds most in use come from tertiary formations in Europe.
- BULLING-BAR.** An iron bar used to pound clay into the crevices crossing a bore hole, which is thus rendered gas-tight.
- BULL PUMP.** A single-acting direct pump, consisting of a steam cylinder over the shaft. The steam drives its piston, to which the pump-rods are attached. By means of the piston attached to the rod, the water is lifted by the steam pressure. The down stroke is effected by the weight of the pump-rod.
- BULLION.** Uncoined gold or silver.
- BUNCH.** A small, rich deposit of ore.
- BUNTONS.** Timbers placed horizontally across a shaft. They serve to brace the wall plates of the shaft lining, and also by means of plank nailed to them to form compartments for hoisting or ladder-ways.
- BURROW.** A heap of refuse.
- BUTT.** The end faces of coal.
- BUTT-ENTRY.** The gallery driven at right angles with the butt-joint.
- BUTTY.** A miner working on contract by weight or measure.

C.

- CACHE.** A place where a prospector's provisions or outfit is buried or hidden.
- CAEN-STONE.** A fine grained, cream-coloured magnesian limestone from Caen in Normandy. It is so soft when freshly quarried that it may be cut by a saw; but hardens on exposure. Much esteemed as a building stone.

CAGE. A frame in which tram-cars are lowered and raised in mine-shafts.

CAINOZOIC. See Tertiary.

CAKES OF ORE. Flat masses.

CALAMINE. Carbonate of zinc, one of its most easily reduced ores; occurs both in beds and veins, mostly in the carboniferous and higher rocks.

CALCAREOUS. Containing carbonate of lime, as a calcareous sandstone or composed of it, as calcareous spar or calc spar.

CALCAREOUS-TUFA. A spongy, porous, or vesicular deposit of carbonate of lime from water. It often encrusts vegetable and animal substances, which are thus said to be petrified. When the carbonate of lime is deposited in a more solid form it is called travertine or calc-sinter. Stalactites and stalagmites are of this nature.

CALCEDONY. See Chalcedony.

CARBONATE OF LIME. C. C. lime 56.0; carbonic acid 44.0.

CALC-SPAR. See Calcareous.

CALCIFEROUS. Carbonate of lime. C. C. lime 56.0; carbonic acid 44.0.

CALCINING. Burning or roasting ores or other minerals as part of their treatment for smelting, crushing, or otherwise utilizing them.

CALIFORNIAN PUMP. A pump worked by water, horse-power, or manual labor, and used only in shallow, alluvial ground.

CAM. Contrivance attached to the revolving cam shaft of a stamp mill for lifting the stamps, being an involute of a circle having for its radius the distance between centre of stem and the cam shaft. The object of the cam being to convert the uniform rotary motion of the cam shaft into an upward motion of the stamp stem, such that the rate of lifting shall be uniform, the action being intermittent, so that time is given to admit of its pulling freely with accelerated velocity under the action of gravity.

CAM-SHAFT. A strong horizontal revolving shaft to which a number of cams are attached, in such a manner that no two of them may strike the tappits at the same instant, thus distributing the weights to be lifted.

CAMBRIAN. Derived from Cambria, the ancient name of Wales. The name given by the late Prof. Sedgewick, of the University of Cambridge, to the most ancient system of fossiliferous rocks.

CANON. A narrow valley. Termed box-canon when the sides are perpendicular.

CAP; CAP-ROCK. The formation covering or capping a lode.

CARBONACEOUS. Containing carbon in the form of mineralized vegetable remains.

CARBONIFEROUS. Containing carbon, as carboniferous limestone.

CARBONIFEROUS SYSTEM. That system of geological structure occurring between the Permian and Devonian, so called from its yielding the main supply of coal in Europe and America (Latin, carbo, coal), it includes the upper coal measures: Millstone grit, carboniferous limestone and lower coal measures. See Carboniferous.

CARBONATES. The combination of carbonic acid with bases. Soft carbonates have lead for a base; hard carbonates have iron for a base. It also means an ore of lead and silver.

CARNELIAN. One of the varieties of Chalcedony, originally only the red, but now of any color.

CARTRIDGE. A paper tube filled with explosives.

CASING. The lining of a shaft, the tubing of a well; also applied to the decomposed matter sometimes found between a vein and the wall-rock.

CAUNTER OR CONTRA LODGE. A vein intersecting another obliquely.

CAVERNOUS. Containing cavities or caverns, sometimes quite large. Most frequent in limestones and dolomites.

CELESTINE. Sulphate of strontium.

CEMENT. Not a mining term in the proper use of the word.

CENTRE. More properly a building term.

CERUSSITE. Carbonate of lead (white lead ore).

CHALCEDONY. Translucent varieties of quartz, such as Carnelian.

CHALK. Cretaceous limestone.

CHALYBEATE. Irony. Waters containing iron, usually the carbonate of iron, in solution, are called Chalybeate.

CHAMBERING-TOOL. Tool for enlarging drill hole at entrance end, to enable charge to be concentrated more effectively.

CHERT. A rock resembling flint, but more brittle; a mixture of lime and silica.

CHIMNEY. A deposit of ore in the shape of a chimney or vertical flue.

CHLORIDES. Compounds of chlorine with other elements.

CHLORITE. A soft, dark green mineral, entering largely into the composition of chloritic schist. It is a silicate of alumina, magnesia and iron, and has a peculiar earthy odor when freshly broken and breathed upon.

CHOCK. In coal mining a pillar built of blocks of wood, used as a support for the roof.

CHOCKE-DAMP. Carbonic acid gas.

CHUTE. An inclined trough or timbered shaft through which ore is delivered by gravity to a receptacle below. See Shoot.

CINNIBAR. Bisulphuret of mercury—86.29 mercury, 13.71 sulphur. The chief mercury ore of commerce.

CLACK. An old form of pump valve.

CLAIM. An area of mining ground staked off or held in accordance with the regulations of the district in which it is situated.

CLAMP. A bracket or support for a pump.

CLASTIC. Fragmental.

CLAYING-IRON. A tapering bar having a hole at the thickest end. It is used in wet ground.

CLAY BAND. Usually found in the coal measures. Clayey carbonate of iron. A heavy, compact or fine-grained looking stone, occurring in nodules and uneven beds among carboniferous and other rocks; it contains only 20 to 30 per cent. of metal.

CLEAN-UP. The operation of collecting the gold which has settled in the flume of a "placer," or in an arastra.

CLEANING-UP. The process of collecting together the metal or ore which has accumulated in the various contrivances for saving it by mining machinery.

CLEARANCE is the general clean-up of the whole mill, which is usually done once a month, inside peates being usually cleaned up every week.

CLEAT. A joint produced by the natural tendency of coal or rock to cleave or split in a certain direction not parallel to the plane of bedding.

CLEAVAGE. The property of separating into layers.

COAL. Mineralized vegetable matter. The vegetable matter appears to have first taken the form of peat, then lignite, and finally bituminous coal; the latter, by the loss of its bitumin has in some places been converted into anthracite or hard coal.

COAL MEASURES. Those strata in the carboniferous system in which coal is found, usually designated to upper and lower coal measures.

COASTER. One who picks dumps, or gleans in abandoned mines for ore in sight.

COBALT.

COBBING. Ore sorting. Literally to break into "cobble."

COBBLE-STONES. Smooth, flattened, rounded, or elongated stones, larger than pebbles and smaller than boulders. They form durable street pavements by being set on edge close together.

COFFER. Mortar.

COFFIN. Old open excavations.

COKE. Carbonized coal.

COLLAR. (1) The top of a shaft or winze; (2) the timbering of a shaft when carried above the surrounding surface.

COLOR. An Australian expression when rock or gravel shows traces of gold.

COLUMNAR. Resembling columns. The cliffs of trappean rocks or diabases of Thunder Cape, Lake Nepigon, and the country north of Black Bay have a columnar structure.

COLUMN-PIPE. The line of pipe through which the water of a mine is pumped.

COMPACT. Of a firm texture.

COMPLEX. In mineralogy, containing many ingredients, compound or composite. Some United States geologists use the word as a noun to indicate a complex set of rocks folded together or intricately mixed, involved, complicated or enlarged.

COMPRESSION. The act of compressing anything. In mining usually applied to compressing of air.

CONCENTRATION. The mechanical separation of a mineral from the ore.

CONCHOIDAL. Name given to a certain kind of fracture resembling a bivalve shell.

CONCRETIONARY. Tending to grow together or mix and hold together.

CONFORMABLE. When one series of strata is parallel to another the two are said to be conformable, when not parallel, unconformable.

CONGLOMERATE. Rock composed of rounded and water-worn stones cemented together.

CONTACT-VEIN. A vein between and in contact with two distinct formations where the deposit lies upon and follows the undulation of the surface of the older one.

CONTEMPORANEOUS. Existing together or at the same time.

- CONTORTED.** Bent or twisted together. Used where strata are very much folded or crumpled on a considerable scale. If on a small scale, they are said to be corrugated.
- CONTRACTION.** Shrinking. Rocks in passing from a vitreous to a crystalline texture shrink considerably, which may account for the subsidence of certain areas. The whole globe of the earth has shrunk by cooling. This contraction is a cause of volcanic action.
- CO-OPERATIVE CLAIM.** One in which the partners or owners are employed.
- COPPER;** red; fusing point 1,996 degrees F. Symbol, Cu. Atomic weight 63.5. Specific gravity 8.9.
- COPROLITE.** A piece of petrified dung.
- CORE OR CORPS.** A miner's day's work, equal to eight hours.
- CORRUGATED.** When beds on a small scale are much wrinkled, folded or crumpled, they are said to be corrugated. On a larger scale they are said to be contorted.
- COSTEANING.** Costean, Cornish term (cothas, find; stean, tin); tracing the rim of a vein by cutting trenches at right-angles along its course.
- COST-BOOK SYSTEM.** A system of mining partnership local to Cornwall and Devon.
- COUNTER OR CONTRA.** A vein intersecting another obliquely.
- COUNTER-BALANCE.** Counterpoise. A weight used to balance another weight.
- COUNTER-GANG-WAY.** One which is driven diagonally to the rise until the workings are reached, when it turns off parallel to the main haulage way.
- COUNTRY, COUNTRY-ROCK.** The strata through which the lodes traverse, or in which ore deposits are found.
- COURSE OF VEIN.** Its direction.
- COURSING.** Conducting the air in different directions by means of doors and stoppings.
- COURSING.** Course, Cornish name for vein, and coursing is often used to indicate the direction.
- CRAB.** An iron windlass for moving heavy weights.
- CRAB-HOLES.** Holes met with in the bed-rock in alluvial mining, having the appearance of being formed by eddies of water.
- CRADLE.** A wooden trough on rockers for washing gold dirt.
- CRATER.** The cup-shaped orifice of a volcano.
- CREEK.** Brooks are often called creeks.

- CREEP.** The crushing down of the overlying rock causing the floor to rise.
- CRETACEOUS SYSTEM.** Cretaceous or chalk system, consists as its name implies of beds of chalk or soft marine limestone, associated with sand, sandstones, clays, and in some localities with beds of coal and lignite above the oolitic or jurassic system.
- CRIB.** A framework roughly dove-tailed. It may be a mere pillar afterwards filled with rock, or it may be the lining to a mill hole or shaft.
- CRIBBING.** The timber lining of a shaft, winze, or mill hole. The term is applied to rough or light timbering, as distinguished from a solid, set-work.
- CROP.** Cornish name given to tin ore when dressed.
- CROSS COURSE.** A vein crossing a main lode at right angles.
- CROSS-CUT.** A drift or level driven across the course of a vein or tilted bed, generally for the purpose of intersecting it, or of ascertaining its width or richness.
- CROSS-HEADING.** A transverse drift which is driven for purposes of ventilation from one gang-way to another.
- CRUSHING.** Reducing ores or quartz by stamping or passing through rollers.
- CRUSHING-MILL.** The same as a stamp mill.
- CRYOLITE.** An ore of aluminum.
- CRYSTALS.** The various geometric forms assumed by nearly all the solid chemical elements and definite compounds, whether natural or formed artificially. The countless modifications of crystalline forms are all grouped under six systems.
- CRYSTALLINE ROCKS.** Greek (Krustallos, ice). The name given to substances when crystallized into definite crystal form as applied to rocks.
- CRYSTALLOGRAPHY.** The science by which the shapes and internal crystal structure assumed by minerals is studied and classified.
- CULM.** The fine waste of coal mines, containing dirt as well as coal dust.
- CUPRIFEROUS.** Copper-bearing.
- CURB.** A timber frame intended as a support or foundation for the lining of a shaft.
- CUT.** To intersect a vein. Open-cut—a horizontal opening at the surface not reaching cover.
- CUTTING DOWN A SHAFT.** Increasing its size.

D.

DAHMENTEA. A new, partially fused mining explosive, said to be 33 per cent. stronger than the best gelatine dynamite, and has a wedging, rather than a pulverizing action, thus breaking off larger pieces.

DAM. A bulkhead; barriers to keep back bad air in water.

DAMP. Miners, in England, call gases "damps." Carbonic acid gas is "choke-damp," and light carburetted hydrogen is "fire-damp."

DAY-SHIFT. The gang of miners working during the day time.

DEAD. Usually called "deads." The valueless matter of a vein, also gangue or waste. It is usually made the stowing or filling of an excavated portion of the seam, bed, or vein, and then is called "gob," "waste," or stull dirt. Sometimes the term is applied in speaking of a sluggish ventilating current. Ore that will not pay for working.

DEAD GROUND. Rock in a mine which, although producing no ore, requires to be removed in order to get at productive ground.

DEAD QUARTZ. Quartz carrying no mineral.

DEBRIS. The loose fragments detached from the bed rock and washed down, to which the term slide is more appropriate; waste rock of any kind.

DECOMPOSITION. The breaking up or decay of compounds into simpler chemical forms.

DECREPITATION. Cracking and flying to pieces when heated.

DEEP. The lower portion of a vein, or of a coal bed.

DELTA. The alluvial lands at the mouth of a river.

DENOUNCEMENT. The Mexican or Spanish equivalent to location and record of a claim.

DENUATION. Rock laid bare by water or other agency; the washing down of surface deposits so as to lay bare underlying formations; any wearing away of land.

DEPOSIT. Anything laid down. Formerly applied to matter left by the agency of water, but now made to include also mineral matter in any form, and precipitated by chemical or other agencies, as the ores, etc., in veins.

DESCENSION THEORY. The theory that veins were filled from above.

DETONATOR. An explosive preparation.

DETRITUS. Accumulations derived from the wearing down of rock surfaces.

DEVITRIFICATION. The change from a glassy to a crystalline state.

DEVONIAN SYSTEM. The geological system of rocks above the silurian and below the carboniferous; so called from Devonshire.

DIABASE. A dark green, greyish green, or nearly black igneous rock, one of the "greenstones," consisting of a triclinic felspar augite (or pyroxene), and usually some olivine with magnetic or titaniferous iron, apatite and iridite, as accessory minerals. It occurs as dykes, beds, overflows and erupted sheets and masses, and it may be coarsely or very finely crystallined. It is common in all the above forms around Lake Superior and north of Lake Huron. Diabase differs from basalt in having undergone certain internal mineralogical changes without, however, affecting its general chemical composition, which is the same in both. Some varieties of amygdaloid have the composition of diabase.

DIAGONAL. (Greek, dia, through, gonia, corner). From corner to corner.

DIAGONAL STRATIFICATION. Diagonal to conformable bedding.

DIALLAGES. A very cleavable variety of augite or pyroxene. Gabbro or diallage rock is composed of this mineral and a triclinic felspar.

DIGGINGS. Australian term for shallow shafts and superficial working in soft material—such as dry alluvial gold drift.

DILUVIUM. Accumulations of gravel, etc., supposed to be the result of the extraordinary or violent action of "washing-under" of water as opposed to alluvium, the deposit resulting from the gentler operations of water.

DIORITE. A trap rock crystalline, whitish speckled black or greenish black.

DIP. The angle which a lode or bed makes with the horizon.

DYKE. Intruded igneous rock filling up fissures and rents in stratified rocks.

DILLUEING. (Cornish term). To wash ore in a fine sieve.

DIES. The movable cylindrical steel or iron base fitting loosely in the mortar of a stamp mill of the same diameter as the shoe.

DIRT-FAULT. A partial replacement of coal in a seam by clay. Not a true fault.

DISC. The projection or tappit on a stamp shaft caught by the cam.

DISINTEGRATION. The breaking asunder and crumbling away of a rock, due to the action of moisture, heat, frost, air, and the internal chemical action of the component parts of rocks when acted upon by these surface influences.

- DISLOCATION.** A shifting of the relative position of the rock on either side of a crack or break. It may be up, down, or to one side. Equivalent to slip, slide, fault, throw, heave, up-throw, down-throw, and trouble.
- DISSEMINATED.** Scattered or diffused through; permeated with.
- DISTURBANCE.** When the rocks have been disturbed in any way from their original position.
- DITCH.** An artificial water-course, flume or canal, with or without natural channels.
- DIVIDING-RANGE.** The watershed or height of land from which the heads of streams flow in opposite directions.
- DIVINING ROD OR DOWSING ROD.** Formerly thought to indicate lodes, veins or water by attractions.
- DIVISIONAL PLANES.** Planes which divide rocks into separate masses, large or small, in the same way as joints, fissured and backs.
- DOLERITE.** A kind of basaltic rock.
- DOLLY.** 1st. An instrument for puddling and mixing clay in a tub.
2nd. A primitive appliance for stamping quartz.
- DOLOMITE** or Magnesian limestones consists of carbonate of magnesia and carbonate of lime. It occurs in many varieties—argillaceous, silicious, ferruginous, etc., etc.
- DOWNCAST.** A ventilating shaft with descending current of air.
- DRIFT.** Geologically—loose alluvial deposit. Mining term—a level driven on the strike of a lode.
- DRIVING.** Tunnelling drifts, adits, or levels.
- DROP.** The quantity of coal fallen at one cutting; also the apparatus for shipping coals in the waggons.
- DROPPER.** A spur dropping into the lode.
- DRUM.** The cylinder on which a hoisting rope is wound.
- DRUSE.** A cavity in a vein or rock lined with crystals.
- DUMB-DRIFT.** A gallery which conducts the air around a ventilating furnace to the upcast shaft.
- DUCT MACHINE.** An apparatus for conducting air into a mine.
- DUMP.** A refuse pile at a mine. It consists of the gangue from which the ore has been cobbled, dead-rock, etc.
- DUNES.** Heaps of blown sand.
- DUTY.** The unit of measure of the work of a pumping engine expressed in foot-pounds.

E.

EARTH'S CRUST. The external part of the earth accessible to geological investigation.

EARTHQUAKE. A local trembling, shaking, undulating; a sudden shock of the surface of the earth, sometimes accompanied by fissuring or by permanent change of level. Earthquakes are most common in volcanic regions, but often occur elsewhere.

ECONOMIC MINERALS. Minerals considered in relation to their use and value in the arts and manufacture.

EJECTOR. A device for utilizing the momentum of a jet of steam to lift a liquid or a finely divided solid.

ELVAN. A Cornish term for a band or course of granitic and porphyrite rocks that traverse the granite and slate rocks of Cornwall.

EMERY. A variety of corundum, chiefly used on account of its hardness for cutting, grinding and polishing purposes.

END. The head of an adit applied to an adit driven in a line with the grain of the coal.

ENGINE SHAFT. Usually the principal shaft in a mine, and the one at which the hoisting and pumping are done.

EOCENE. The oldest division of the Tertiary system. This name was introduced by Sir Charles Lyell, and means the dawn of the recent.

EPIDOSITE. An intimate mixture of epidote and quartz, forming an exceedingly hard and tough rock.

EQUIVALENT. Used in geology in regard to rock of corresponding age in regions far from each other. In chemistry, that portion of a simple element or of a compound which will unite chemically to the corresponding equivalent of some other element or compound. These proportions are always definite, no more or no less being admitted.

EROSION. The gnawing or wearing away of rocks by means of denuding agencies. The disintegrating processes already referred to soften the rock, which are then removed by the agency of ice or water, aided by gravitation, etc.

ERUPTION. A violent breaking forth to the surface of pent-up matters, such as lava, volcanic ashes, stones, mud, water, etc.

ESCARPMENT. A perpendicular cliff, especially of stratified rock.

EXEMPTED CLAIM. A claim allowed by the mining laws to remain idle for a certain term, and for which an exemption certificate has been obtained.

EXFOLIATE. To fall off in leaves or scales, as some rocks do by weathering. In this way, the concretionary structure of some kinds of greenstones is well brought out; the feather surface showing only rounded masses, with the successive spherical layers falling off.

EXPLODER. A chemical employed for the instantaneous explosion of powder.

EXPLOITATION. Discovering, developing and floating a company to work a mine or similar undertaking.

EYE. The top of a shaft or pit.

F.

FACE. The exposure of rock at which work is being done; also, a perpendicular wall of rock.

FAN. A machine used for forcing air down or exhausting from a mine.

FANG. An air course along the side of an adit or shaft.

FATHOM. Six feet—a cubic fathom, 6 feet x 6 feet x 6 feet.

FAULT. Dislocation along a fissure.

FAUNA. The animals collectively of any given age or region.

FEEDER. A small vein falling into or joining a larger one, and often enriching it or otherwise affecting its character.

FELDSPAR. A crystallized constituent of granite, gneiss, porphyry and many other rocks.

FELSITE. A massive, amorphous, felspathic rock forming dykes and mountain masses.

FIRE-CLAY. Fire clays derive their name from their highly refractory or infusible nature; from their containing little or no lime, protoxide of iron or alkaline earths.

FIRE-DAMP. A carburetted hydrogen gas, inflammable and specifically lighter than air.

FIRE SETTING. The process of exposing very hard rock to intense heat, rendering it thereby easier of breaking down.

FISSILE. Capable of being split, as schist, slate and shale.

FISSURE VEIN. A crack or rent cutting through various strata at any, most frequently at right angles, and containing vein matter.

FJORDS. Deep narrow arms running in from the sea. They are very numerous on the coasts of Norway, Greenland, and Eastern Labrador.

FLAGGY. Capable of being split in parallel faced slabs thicker than slates.

- FLOAT.** Float or "blow out," displaced, outcrop of an auriferous vein.
- FLOAT GOLD.** Very fine gold dust which floats on running water.
- FLOATING REEF.** Loose masses of displaced auriferous rock.
- FLOOKAN.** Flookan or "Flukan," a cross vein filled with a soft, greasy clay. Also a vein containing a preponderance of clay is called a "flukan lode."
- FLOOR.** A horizontal rock surface left by a joint or bed; the bottom of a drift or other working in a mine.
- FLORA.** The plants collectively of a given age or region.
- FLOUR-GOLD.** The finest gold dust.
- FLOURING.** The coating of quicksilver with a thin film of some sulphide by which it is rendered useless for amalgamation purposes also called "sickening."
- FLUME.** A wooden trough, sluice, or race, for conveying water.
- FLUORSPAR.** Fluoride of calcium. A matrix though by no means so common as quartz; it often forms or is mixed with the gangue of copper, lead or silver-bearing lodes—often called Derbyshire spar.
- FLUTINGS.** Smooth, gutterlike channels, or deep, smooth furrows worn in the surface of rocks by glacial action.
- FLUVIATILE.** Pertaining to rivers.
- FLUX.** A substance used to promote fusion of metals in the reduction of ore.
- FOLIATED.** Arranged in leaf-like laminae, such as mica or mica schist.
- FOOT WALL.** The underwall of a lode.
- FORAMINIFERA.** Minute marine animals of the lowest and simplest organization, but having beautiful shelly coverings.
- FORFEITURE.** The loss of possessory title as the result of abandonment or the failure to comply with the conditions under which the title was held.
- FORK.** (Cornish.) The bottom of the pump in which the water is collected at the bottom of a mine.
- FORK.** (Derbyshire.) A prop for keeping up soft ground.
- FORMATION.** "Any assemblage of rocks which have some character in common, whether of origin, age or composition."—Lyell.

In chronological geology, formation constitutes as it were the unit, and several formations may go to make up a system. The word is often loosely used to indicate anything which has been formed or brought into its present shape.

- FOSSICKER.** One who gleans the crevices and cracks for ore after the miner.
- FOSSIL.** The animal or vegetable remains found in rocks.
- FRACTURE.** The character or appearance of a freshly broken surface of a rock or mineral. Peculiarities of fracture afford one of the means of distinguishing minerals and rocks from one another.
- FRAGMENTARY ROCKS.** Rocks composed of fragments, whether large or small, broken from pre-existing ones.
- FREE.** A term employed in speaking of loose minerals uncombined, as free gold, free sulphur, etc.
- FREE-MILLING.** Said of auriferous and argentiferous ores which are reducible without roasting.
- FREESTONES.** Varieties of sandstone which may be freely dressed by the stonecutter.
- FRIABLE.** Easy to break or crumble naturally.
- FUCOIDS.** Fossil sea-weeds; abundant among silurian strata.
- FUNDAMENTAL OR RECENT ROCKS.** Those forming the lowest known or base structure of the earth's crust.
- FUSE.** A cord or tape filled with gunpowder, etc., used for conveying fire to explosives to be ignited.

G.

- GABBRO.** An igneous rock consisting of a crystalline granitoid mixture, of a triclinic felspar and diallage, the latter being a variety of augite with perfect cleavage in one direction.
- GAD.** A small wedge for splitting rock. A similar tool used by quarrymen is called a plug.
- GALENA.** Sulphide of lead. The principle ore of lead; it usually contains a perceptible amount of silver, and is sometimes very rich.
- GALLERY.** Any horizontal excavation in a mine, or the benches in a quarry. In mining, a drift, tunnel or level for extracting the mineral or proving the vein or bed.
- GANGUE.** The vein stuff or matrix of a vein in which the metallic contents are enclosed. The commonest gangue are quartz, calc-spar, fluorspar, byssolite, &c.
- GANGWAY.** A roadway through the deads or rubbish in a mine.
- GARLAND.** A trough or channel round the inside of a shaft for catching the water that trickles down the sides.

- GASH VEIN.** Fissure veins wide at the surface, but running out in every other direction as its name implies. These occur most frequently in carboniferous limestones.
- GATE WAY.** A gangway having ventilating doors.
- GAUGE-PRESSURE.** The pressure shown by an ordinary steam gauge. It is the absolute pressure plus that of the atmosphere.
- GEODES.** Rounded hollow nodules; the cavities are usually lined with crystals.
- GEOLOGY.** "The science which investigates the history of the earth."—Geikie.
- GEYSER.** Hot springs which occasionally throw up boiling water like fountains. They occur in Iceland and the Western States of North America.
- GLACIER.** A body of ice which descends from the high to the low ground.
- GLANCE.** Literally shining, name given to certain sulphides.
- GNEISS.** A foliated crystalline rock of a general granitoid composition. The commonest varieties are mica-gneiss, consisting of felspar, quartz, and mica; and hornblende gneiss, consisting of felspar, quartz and hornblende.
- GOAF.** The excavated space of a coal mine, usually filled with the gob of the seam.
- GOBBING UP.** Filling with waste.
- GOB-FIRE.** Fire in collieries produced by spontaneous combustion.
- GOBS.** The refuse material from the working of a mine.
- GOLD.** A metallic element; bright yellow; specific gravity 19.34; fusing point 2,016 degrees F. Almost invariably found native associated with variable percentage of silver. Symbol Au. Atomic weight 196.6.
- GOSSAN.** Cornish name given to quartz calcareous spar and other substances stained with iron and filling a lode, usually at the surface or outcrop—often called the "Iron Hat."
- GOUGE.** The layers of clay or decomposed rock which lie along the wall or walls of a vein. It is not always valueless.
- GONIMETER.** An instrument for measuring solid angles or the inclination of planes.
- GRANITE.** Common granite, consists of quartz, felspar and mica; its texture and colour varying according to the preponderance of the above composition.
- GRANITE FAMILY.** Rocks belonging to the granitic group.

GRAPHIC GRANITE. A variety of binary granite in which the quartz is disposed in the felspar in such a way that in cross-section it has some resemblance to Hebrew and Arabic writing, and from this circumstance it derives its name.

GRAPHITE. So called from its early use in making writing pencils; pure graphite contains 95 to 99 per cent. of carbon. See Black lead.

GRASS. Ore brought to grass is ore brought to surface.

GRASS ROOTS. A miner's term equivalent to the surface.

GRATING OR GRAPE. A perforated plate or frame with bars used for washing and separating ores.

GRAY COPPER. Tetrahedrite. An ore containing copper 15 to 42 per cent.; combined with iron, zinc, silver, mercury, arsenic and antimony. It varies in color, hardness and specific gravity.

GREENSTONE. A general name for the crystalline granular trap rock, such as diolite, diabase, basalt, etc., and is a convenient term for use in the field, where it is difficult to distinguish these rocks from one another. Trap has too wide a range of meaning.

GREYWACKE. A grey, ashy-looking rock, consisting of a mixture of grains of felspar and quartz, with some amorphous mineral, and often containing rounded and angular fragments of all sizes, from that of peas up to boulders of a quartz felspar rock. These are often so abundant as to constitute a breccia-conglomerate. Greywackes are very common rocks in the Huronian system, from the shore of Lake Huron northward.

GRIT. Sandstone in which the grains are sharper or more angular than usual.

GROUND-SLUICE. A channel cut in the bottom or bed rock into which the earth is conveyed by a stream of water.

GRUB-STAKE. Provisioning a prospector on a bargain to share his discoveries.

GUIDE. The timbers nailed to the timbers of a shaft, for the purpose of guiding the cage.

GULLY. A small valley with deep sides, usually cut or worn out of clay or earth.

GYP SUM. (Alabaster.) Sulphide of lime used extensively for manures and for the manufacture of plaster of paris.

H.

HALVANNER. The dresser of the halvans.

HALVANS. Refuse ore—usually applied to refuse copper ores.

- HAEMATITE** (blood like), or red oxide of iron. Occurs in several varieties as kidney-ore in reniform masses; compact when void of crystalline texture, red-ochre or argillaceous haematite when soft and clayey, as specular when in crystals of a steel-gray colour, and as micaceous when foliated. Limonite is sometimes (inaccurately) called brown haematite. The finest kinds of steel and iron are made from haematite. One of the commonest ores of iron; it is the peroxide or sesqui-oxide, and when pure contains about 70 per cent. of metallic iron and 30 of oxygen.
- HANGING WALL.** The upper side of a lode.
- HARDNESS OF MINERALS.** Mineralogists have adopted a conventional scale of hardness for minerals. It is divided into ten degrees, and the following minerals are used for reference as standards: 1, Talc; 2, rock salt; 3, calcspar; 4, fluor spar; 5, apatite; 6, orthoclase felspar; 7, quartz; 8, topaz; 9, corundum; 10, diamond. There is no scale of hardness for rocks which are generally composed of mixtures of different minerals, but some varieties may be referred approximately to the scale for minerals.
- HEAD-GEAR.** A pit head frame.
- HEADING.** The section of tunnel driven in advance of the lower section or bench.
- HEADINGS.** The mass of gravel and pay dirt above the gold-bearing wash or pay dirt.
- HEAVE.** A fault by which the lode is thrown upwards.
- HEAVY GOLD.** Gold in large particles.
- HEAVY SPAR.** Largely used for adulterating white lead (in Canada often called "Presbyterian white lead").
- HELVE.** A handle.
- HEWER.** A coal miner; one who hews or undercuts the coal.
- HEXAGONAL.** Having six angles, and consequently six sides. Basaltic columns and crystals of quartz, apatite, etc., are examples.
- HIGH EXPLOSIVES.** Those of greater detonating force than black powder.
- HITCH.** A shoulder or hollow cut in the rock to support one end of a stull or other timber.
- HOG BACK.** An anticlinal and rounded ridge having the appearance of a hog's back.
- HOLING.** The picking of a groove in the lower part of a coal seam for the purpose of facilitating the breaking down of the upper mass.
- HONEYCOMB.** Basalt, or any rock containing many cavities.

- HOPPER.** A box in the form of an inverted pyramid, and having an opening at the apex used for directing broken rock, earth, etc., to a contracted space, in the manner of a funnel.
- HORIZON.** In geology, refers to the age or place of rock in the chronological scale. A rock is spoken of as belonging to a higher or lower horizon according as it is newer or older than some other rock.
- HORNBLENDE.** A mineral of a greenish-grey black composed of silicates of lime, magnesia, also iron, alumina, etc.; has a horny glistening lustre (hence its name).
- HORNSTONE.** The cherty and chalcydonic varieties of quartz.
- HORSE.** A mass of country rock enclosed in a vein and almost or entirely surrounded by the vein stuff; sometimes called boulders.
- H-PIECE.** The portion of a column pipe containing the valve of the pump.
- HUDGE.** An iron bucket for hoisting.
- HUMMOCKY.** Lumpy or in small, uneven knolls.
- HURONIAN SYSTEM.** The great system of azoic or crystalline rocks lying between the Laurentian (below) and the Cambrian system (above). This name was first given by Sir William Logan and Dr. T. Sterry Hunt to these rocks, as they were largely developed on the north side of Lake Huron, but the term has been pretty generally adopted for rocks of corresponding age all over the world.
- HUNGRY.** Barren; starved-looking.
- HUSHING.** Discovery of veins by accumulation and sudden discharge of water.
- HUTCH.** A cistern or box for washing ore.
- HYDRATED.** Containing water in chemical combination, and hence in a definite proportion in each case, as gypsum, which contains "water of crystallization," hydrate of lime, or lime which has absorbed water on slacking; hydrated oxide of iron, or yellow ochre, which can be readily converted into the anhydrous, or red oxide, by driving off the water by heat.
- HYDRATION.** The process of impregnating with water.
- HYDRAULIC HOSE.** A common hose used in gold washing, for conveying water to the alluvial claims, where by the fall and pressure of the water, the detritus is broken down and washed.
- HYDRAULIC CEMENT.** Cement which sets under water. The rocks which, on being calcined and ground very fine, yield this cement must contain, in addition to lime, certain proportions of alumina, silica and magnesia. A little iron is also usually present.

HYDRAULIC MINING. Washing down gold-bearing earth by means of a large and powerful jet of water brought from a considerable height and directed by a hose pipe, so as to have a pressure of from 50 to 100 pounds or more to the square inch. This process has been extensively used in California, and has also been tried in the Chaudiere gold region of the Province of Quebec.

HYDRAULICS. That method of placer mining where the gravel is washed by a stream operating under hydraulic pressure.

HYDRO-CARBONS. Substances composed of hydrogen and carbon, as bitumens, paraffine, petroleum, benzine, etc.

HYPOGENE. A term proposed by Lyell for all nether formed rocks, i.e., rocks which have assumed their present form at great depths beneath the surface, whether originally stratified or unstratified. The former belong to the metamorphic, and the latter to the plutonic group.

I.

ICELAND SPAR. The transparent variety of calcspar found in perfection in Iceland. It possesses the property of double refraction of light. If a dark line be viewed through it, it will appear as two parallel lines.

IGNEOUS. Connected with subterraneous heat. Igneous rocks are those which have evidently been once in a molten condition. Those which have cooled at and near the surface, such as lava and amygdaloid, are called volcanic rocks, while those which have cooled at depths, and under great pressure, such as granite, syenite, diolite, etc., are called plutonic rocks.

ILMENITE. Titanic iron or menaccconite; a black, heavy mineral like magnetite, and composed of black oxide of iron, with a varying quantity of oxide of titanium. It occurs similarly to magnetite. The black iron ores associated with the plagioclase, or trickling felspar rocks, appear to be prone to contain titanium. No profitable process has yet been discovered for the extraction of iron from ores containing more than a very small percentage of titanium.

IMPERVIOUS. Impassable; applied to strata, such as clays, shales, etc., which will not permit of the penetration of water, petroleum or natural gas.

IMPREGNATION. When a substance, such as an ore, has been introduced into a rock in a disseminated form it is said to be an impregnation; a diffused mixture; a sprinkling incorporated in the mass.

INBYE. Towards the interior of the mine, and away from the shaft.

INCLINE. A standing shaft or tramway.

INCLINED DRIFT. A drift run at an incline to subserve the drainage. (2) A misnomer applied to a slope sunk upon a deposit having slight departure from the horizontal.

INDICATOR. That which points or directs. Some forms show the position of the cage in the shaft. Others record upon paper the pressure of the steam in an engine cylinder at various points in the piston stroke.

INDURATED. Hardened; applied to rock hardened by heat, pressure, or the addition of some ingredient not commonly contained in the rock referred to, as marls indurated by carbonate of lime.

INFILTRATION. The deposition of matter among the grains or pores of a rock by the permeation or percolation of water carrying it in solution.

INFILTRATION THEORY. That which refers the origin of the ore to the deposit of mineral from water holding it in solution.

INJECTION THEORY. That which refers the origin of the ore to the introduction of igneous fluid.

INORGANIC. Not organic; unconnected with animals or plant structure.

IN PLACE. (1) A vein or deposit in its original position; (2) *in situ*. Words used in section 2329 of the U. S. Revised Statutes, qualifying the words "quartz or other rock," and to distinguish lode from placer claims.

IN SITU. In position or place; applied to solid rocks or fixed rocks, as opposed to those which are loose and may have been transported.

INSPISSATED. Thickened, as by evaporation and oxidation; as, for example, the pitch or gum resulting from petroleum after long exposure.

INTAKE. The entry which conducts the incoming air-current to the mine. It is synonymous with down-cast.

INTERCALATED. In geology means interposed, or placed between, as beds of one kind placed between or interstratified with those of another kind.

INTERSTRATIFIED, or Interbedded. Strata laid between or alternating with others.

INTRUSIVE. Applied to igneous rocks which have been forced between or into the midst of or through others.

IRIDESCENT. Colored like the rainbow. A play of colors, such as is seen on the peacock's tail. Labradorite and some other felspar show it. The tarnish on the surface of coal, copper pyrites, etc., is sometimes iridescent.

IRON HAT. (Eisen hat). The outcrop or cover of a lode, it being usually colored by the decomposition of the iron (gassan).

IRON PYRITES, or Pyrit. Bi-sulphide of iron. A hard, heavy, shiny, yellow mineral, generally in crystals of the cubic system. It may be distinguished from copper pyrite by being of a paler yellow color, harder and giving a black powder, whereas copper pyrites gives a yellow powder. When struck by steel, or when two pieces are struck briskly together, sparks of fire are emitted, accompanied by the odor of sulphur. A very common mineral. Marcasite has the same composition, but is white and crystallizes differently. **Pyrhotite, or magnetic pyrites, is the monosulphide of iron, and is of an iron-gray or bronze color.**

IRON STONE. Any ore of iron from which the metal may be smelted, commercially, but usually restricted to stratified ores, especially to clay iron stone—the ore from which a great deal of the iron of Great Britain has been formed. In distinction to iron ore, being a rock or stone containing a low grade of iron, such as the “gray band,” “black band” ironstones found in the coal measures.

ISOCLINAL. Applied to strata which have been so completely overturned that the upper fold or inverted portion dips in the same direction as the corresponding lower portion.

J.

JACKANAPES. The small guide pulleys of a whim.

JASPER. Compact opaque varieties of quartz, with conchoidal fracture, and usually capable of a high polish. The colors are red, brown, green-spotted, nearly white, etc.

JIG. A machine for concentrating ore by means of sieves.

JIGGING. One of the operations in the dressing of crushed ores, such as those of lead, copper, etc. The usual process consists in shaking or jerking the ore in a wire-bottomed sieve, suspended in a vat of water.

JIGGING MACHINE. A power machine for dressing ores.

JEWELLERS' SHOP. Name given to a very rich patch of gold drift.

JUMP. To take forcible possession of another man's claim.

JUMPER. A steel drill weighted in the centre and used for drilling holes by hand by lifting and dropping it.

JUMP-UP. A short winze dug in the roof of a drive.

JOWL. To strike with a hammer on a wall of coal to determine its thickness.

JUDD. A mass of coal that has been holed or under-cut for the purpose of being thrown down by wedges.

JURASSIC SYSTEM. The system which succeeds the triassic; so called after the Jura mountains, on the border between Switzerland and France. It corresponds with the Oolite of England.

K.

KAMES. Ridges of sand and gravel of which the stratification is rudely parallel to the slopes of the surface. Their origin has not been satisfactorily accounted for.

KAOLIN (China clay.) Taken from Chinese word (Kan-ling, high ridge), a clay formed of decomposed felspathic rock.

KEEPS. Movable frames or brackets of iron near the top of a shaft.

KEEVE. A large vat.

KIBBLE. A large barrel-shaped bucket, strongly bound with iron hoops, hung by a rope and used for hoisting ore, etc., up shafts in mines.

KIES. The pure or separated sulphide, as distinguished from the vein matter in bulk.

KILN. A large receptacle for calcining ores, limestone, etc.

KINDLY. A miner's term for a rock which is considered congenial or likely for carrying ore.

KINDLY QUARTZ. Quartz having the appearance of that which usually contains gold.

KINK. To curl into knots, as ropes; to twist into angled knots.

KNOCKSTONE. A stone or piece of iron for breaking lead ore on.

KIRVING. See Holing.

L.

LABRADORITE. Lime soda felspar; a silicate of alumina, lime and soda. Crystallization triclinic. See Felspar.

LACCOLITE. A mass of igneous rock which has not reached the surface, but has been forced between two beds of rock where it has spread out. Examples occur in the Thunder Bay region.

- LACUSTRINE DEPOSITS.** Deposits formed in the bottom of lakes.
- LAGGING.** The slabs or small timber placed between the main timber-sets and the roof or wall to prevent small rock from falling into the drift.
- LANDSLIDES, or SLIPS.** Large masses of clay, earth or rock, which have lost their support and slid down, sometimes temporarily blocking up streams.
- LAPPION.** (Cornish.) Ancient term given to those who formerly dressed ore with their feet in a buddle.
- LATH.** A plank laid over a frame-centre or used in poling.
- LAUNDER.** A chute or trough for conveying powdered ore, or for carrying water to or from the crushing apparatus.
- LAUNDRY-BOX, OR LAUNDER BOX.** A box at the surface receiving the water pumped up from below.
- LAURENTIAN SYSTEM.** The system of very ancient essentially crystalline Archean rocks underlying the Clastic Huronian strata. The Laurentian is not known to be fossiliferous, unless the doubtful Eozoon Canadense be of organic origin.
- LEAD.** A metallic element; bluish-white; fusing point, 617 degrees F. Symbol Pb. Atomic weight, 207. Specific gravity, 11.3. Galena and carbonates are its most common ores.
- LEAD.** (Australian.) Well defined and profitable bed of pay dirt in auriferous drift.
- LEADER.** A small ore vein, or branch vein indicating the presence of a larger or better one.
- LEAN.** Applied to poor ores, or those containing a lower percentage of metal than is usually worked.
- LEDGE.** A term in use on the Pacific slopes synonymous with lode.
- LENGTH.** A certain portion of a vein when taken in a horizontal line on its course.
- LENTICULAR.** Of an onion shape. Applied chiefly to quartz vein assuming this form. A horizontal gallery in a mine.
- LEVEL.** A horizontal gallery in a mine.
- LIFT.** All the mine workings connected with, opened from, and mined out at one level; also the length of pump-pipe between stations.
- LIGNITE.** Fossil-wood or wood-coal.
- LIMESTONE.** A rock composed of carbonate of lime; of all colors, and varies in texture from compact or amorphous to closely crystalline. White marble is a finely crystalline variety. Chalk is a soft form. Limestone may be distinguished from other rocks by being easily scratched with a knife, and by effervescing when acid is placed upon it.

- LIMONITE.** Brown hematite; hydrated oxide of iron.
- LITHARGE.** The protoxide of lead.
- LITHOLOGY** or **PETROLOGY.** The study of rocks as such; a branch of geology which is being much developed in recent years. By making thin sections and developing them under the microscope, the nature of a rock may be determined, as well for most purposes as by chemical analysis.
- LITTLE GIANT.** A jointed iron pipe and nozzle, decreasing in diameter with the increase of the hydraulic pressure; used in placer mining.
- LIVE QUARTZ.** A variety of quartz usually associated with mineral.
- LOAM.** A mixture of sand and clay. If decayed vegetable matter be added it assumes a dark color, and is called vegetable loam.
- LOB OF GOLD.** A rich deposit of gold contained within a small area.
- LOCATION.** Those successive acts by which a claim is appropriated. (2) The claim itself.
- LODE.** An aggregation of mineral matter containing ores in fissures; a vein of metallic ore; a ledge.
- LONG-TOM.** A trough for washing gold-bearing gravel or earth.
- LONG WALL.** The system of working a long wall or face of coal, shale, fire-clay, ironstone, rock salt, gypsum, or other mineral occurring in beds or seams. The main ways are usually driven to the boundary, and the whole of the seam is removed by working a long wall or face backwards to the shaft, leaving no pillars, and allowing the roof ultimately to subside, thus excavating the whole of the mineral.
- LUSTRE.** The character of the light reflected by minerals; it constitutes one of the means of distinguishing them.
- LYDIAN-STONE.** A compact or close-grained, nearly black variety of jasper.

M.

- MACHINE-WHIM.** A winding drum with a vertical axis operated by steam power.
- MACROSCOPIC.** Readily seen by the naked eye. On a large scale, compared with microscopic.
- MAGNESIAN LIMESTONE.** See Dolomite.
- MAGNETIC IRON PYRITES.** See Iron Pyrites.

- MAGNETITE**, or Magnetic iron ore. Black oxide of iron. In addition to its magnetism it may be distinguished from hematite by yielding a black streak and powder.
- MALTHA**. The pitch or gum resulting from the drying up and oxidation of petroleum, as when it has reached the surface of the ground.
- MAMMILLATED**. Having the form of paps or breasts.
- MAMMOTH**. A fossil elephant, allied to the living species, but larger.
- MANDRILL**. A pick for undermining.
- MANGANESE**. A metal chemically related to iron. The black oxide Pyrolusite; the grey oxide, manganite, and the earthy oxide wad, are used in the arts. Manganese is used in the manufacture of Bessemer steel; also for glazing black pottery.
- MAN-ENGINE**. A mechanical appliance for raising and lowering miners.
- MAN-HOLE**. A hole or an auxiliary shaft through which a man may pass in going from one level to another into a stope, or from one ladder to another.
- MASSIVE ROCKS**. Those which have no stratification or lamination, as greenstones, granite, syenite, etc.
- MARBLE** is properly speaking an architectural term, and is applied to the compact crystalline, mottled and veined varieties of limestone susceptible of a fine polish.
- MARCASITE**. See Iron Pyrites.
- MARL**. Clay containing carbonate of lime.
- MARLY**. Resembling marl.
- MASTODON**. A genus of extinct elephantine mammals, having conical protrusions on the grinding surface of their teeth, whereas the mammoth has flattened, transverse ridges.
- MATRIX**. The mineral associated with ore in a lode.
- MATTE**. A product of the smelting of sulphuretted ores obtained in the process which follows roasting.
- MEASURES**. A term embracing the strata of a geological series.
- MESOZOIC; OR SECONDARY**. The "middle life" period or age. It is the third of the five grand divisions of geological time. It includes (in ascending order) the triassic, the oolitic or jurassic and the cretaceous systems.
- METALLIFEROUS**. Carrying metal.
- METALLURGY**. The art of working metal, including smelting, refining and parting them from the ores.

METAMORPHIC. Applied to rocks which have been changed in form and internal structure. Heat, pressure and the acting on the constituents of rock have been the main causes of metamorphism, converting ordinary and soft sedimentary deposits into crystalline and hard rocks.

METEORITE. See Aerolite.

MICA. A finely foliated mineral of pearly lustre composed of silicates of alumina, with potash, magnesia, lime, iron, manganese, etc. (Latin, *Mico I flisten*).

MICA SCHIST. A metamorphic rock composed of quartz and mica foliated and crystalline.

MICROSCOPIC. So small as to be seen only by the aid of the microscope.

MILL-HOLE. (1) A passage left in the stope for throwing down rock and ore. (2) An auxiliary shaft connecting a stope or other excavation with the level below.

MILL RUN. The average yield of the ore actually passed through the mill over a considerable given time.

MILLSTONE GRIT. A coarse grit rock occurring between the upper coal measures and the carboniferous limestone it takes its name from, being formerly used for mill stones.

MINE. An excavation or series of excavations in the earth for the extraction of minerals. A mere discovery or outcrop of an economic mineral does not constitute a mine. It is the working of the deposit, not its mere existence which does this. In some countries the ore is called mine.

MINERAL. Scientifically, any inorganic substance having a definite chemical composition and crystallizing in definite forms. Each of these constitutes a mineral species. See Rock. But the word means literally anything dug out of the earth, and in this sense includes everything except living or recently dead organic matter. Many mineral substances, such as coal, some limestones, etc., are composed of mineralized organic matter.

MINERALIZATION. The conversion of a substance into mineral, as peat into coal.

MINERALOGY. The study or science of minerals; often confounded with geology, which see.

MINERAL OIL. Petroleum or other liquid obtained from the earth.

MINER'S INCH. A miner's inch is the quantity of water which will flow during ten hours through an aperture 1 inch square, under a mean head of six inches.

- MINER'S RIGHT.** The license to locate.
- MINING.** In its broad sense embraces all that is concerned with the winning or getting of minerals.
- MINING RETREATING.** A process of mining by which the vein is untouched until after all the gangways, etc., are driven, when the mineral extraction begins at the boundary and progresses towards the shaft.
- MIOCENE.** The middle Tertiary system.
- MOIL.** A short length of steel rod tapered to a point, used for cutting ditches, etc.
- MOLECULE.** A molecule is the smallest particle of a substance which can exist alone.
- MOLLUSCA.** One of the primary divisions or provinces of the animal kingdom; it embraces those soft bodied invertebrates most but not all of which are provided with shells, as oysters, snails, slugs, etc.
- MOLYBDENITE.** Sulphide of molybdenite—a soft, bluish black, usually laminated mineral, occurring in veins of quartz, etc., having somewhat the appearance of graphite, but in most cases leaving a dark green mark on white paper. It is found in considerable quantity; it has a commercial value; is used in the manufacture of a blue pigment for pottery ware.
- MONOCLINE.** A bend in strata in one direction only.
- MOONSTONES.** Pale, opalescent, almost transparent varieties of felspars.
- MORAINES.** Piles or ridges of boulder, drift or till which have been accumulated at the sides (lateral) or lower extremities (terminal) of glaciers.
- MORTAR BOX.** The large, deep cast-iron box into which the stamp falls, and the ore is fed in a gold or silver stamp mill; also called the stamper box.
- MOSS-AGATE.** A variety of agate showing branching forms like those of moss.
- MOUNTAIN CORK.** An extremely light, non-fibrous variety of asbestos.
- MOYLE.** See Moil.
- MULLOCK.** Debris of the country rock filling a fissure; Australian term.

N.

- NAPHTHA.** A highly volatile liquid form of hydrocarbon.
- NARROW WORK.** Working places narrower than the rooms, entries, headings, break-throughs, gangways, etc.

NEW RED SANDSTONE. The former name for the Permian system; it lies above the carboniferous, while the old red sandstone lies below it.

NICKEL. One of the metallic elements. It is a white metal, having a lustre like silver, but in its chemical relations it is more nearly connected with iron; it is not, however susceptible to oxidize like iron, and this is one of the properties which renders it so valuable for plating this metal. It has recently been found to give great toughness to steel, a most valuable property. Nickel is found most abundantly as a sulphide, associated with iron and copper.

NIP. A more or less gradual thinning out of a stratum or vein.

NITTINGS. Refuse or workable ore.

NODULE. An irregularly shaped rounded rock; a concretion in a softer matrix, as the kidney stones found in clay almost everywhere. The bombs or kettles in the black shale of the Kamistiquia and White Fish valleys are only great nodules. The flints of the chalk of England and the detached lumps of clay, iron stone of the carboniferous shales, etc., are other forms of nodules. Nodules have generally formed themselves around some fragment of either organic or inorganic matter as a centre or nucleus.

NITRO. A corrupted abbreviation for nitro-glycerine or dynamite.

NOGS. Square bits of wood piled to support the roof of coal mines.

NUGGET. A lump of native gold, silver, platinum, copper, etc.

O.

OBSIDIAN. Dark colored, volcanic, glassy rock, with a conchoidal fracture, the produce of volcanoes of later geologic times. It is a silicate of alumina, potash, soda and lime.

OCHRE. Naturally occurring pigments, as yellow ochre, or hydrated oxide of iron. Blue, green, red, etc., clayey mixtures, which may be used as coarse paints, are also called ochres. Ochre is also used as a mineralogical term for certain decomposition oxides, as bismuth, chrome, antimony and cobalt ochres.

OLD RED SANDSTONE. See New Red Sandstone.

OLIGOCLASE. Soda lime felspar; a silicate of alumina, soda and lime. Crystallization triclinic. See Felspar.

OLIVINE. An earthy looking olive green or brown mineral, occurring in many trappean rocks.

OOLITE. A limestone composed of small round grains resembling fishes' eggs, hence the name.

- OPAL.** A gem composed of silica, with from 5 to 10 per cent. of water, having a "play of colors," or reflecting rainbow-like colors with a brilliance of "fire," that gives to some pieces a great value. Generally white, and having a hazy or milky translucency.
- OPALESCENT.** Resembling opal.
- OPEN CUT.** A longitudinal surface working not entering cover.
- OPEN CUTTING, OR OPEN-CASE.** A cutting or excavation in a mineral deposit, or for the purpose of reaching one.
- OPERATOR.** One who works a mine either as owner or lessee.
- ORE.** Properly speaking, combinations of metals with other substances, but also applied to the matrix from which metals such as gold, silver and copper are extracted. Sometimes also applied to other minerals won by mining, as apatite, byrites, etc.
- ORE RESERVES.** The ore body when exposed ready for stoping.
- ORE-SHOOT.** A large and usually rich aggregation of minerals in a vein. Distinguished from pay-streak in that it is a more or less vertical zone or chimney, or rich vein matter extending from wall to wall, and having a definite width laterally.
- ORGANIC.** Having organs for carrying on vital processes. Animals and plants are thus organized, as distinguished from minerals or inorganic substances. When these organs or organic structures become mineralized, they are fossils or organic remains.
- ORTHOCLASE.** Potash felspar; a silicate of alumina and potash. Crystallization monoclinic. See Felspar.
- OUT-CROP.** The exposed portion of a vein on the surface or outcrops of upturned strata coming to the surface.
- OUTLET.** An exit passage from the mine.
- OUTLIER.** A portion detached from the main body, an island, as it were, surrounded by some other kind of rock.
- OUTPUT.** The gross produce of a mine.
- OVERLAP.** When strata extend over an ancient foundation further than those immediately preceding them; this is called an overlap.
- OVERTURNED.** Where strata have been highly tilted until they pass the perpendicular, so that the lower fall becomes turned upside down, they are said to be overturned.
- OXIDE.** The combination of a metal with oxygen.
- OUTBYE.** Nearer to the bottom of a pit.
- OVERWORKINGS.** The excess of mineral produce uncovered by a certain rent.

P.

PAINT-GOLD. Gold found in cement of such remarkable fineness as to resemble paint or gilding.

PALAEONTOLOGY. The study of ancient life, especially of animal remains; that of plant remains or fossil, botany being called palaeobotony.

PALAEOZOIC. The second of the five grand division periods or ages of the rocks of the earth's crust; so called from containing evidences of the most ancient life on the planet. The palaeozoic period includes (in ascending order) the Cambrian, Silurian, Devonian, Carboniferous and Permian systems.

PAN. An iron basin used in gold prospecting.

PANEL. The division of a mine which is isolated from neighboring districts and provided with distinctive haulage and mining system.

PAROXYISM. In geology, any violent or sudden natural occurrence, as a volcanic eruption or sudden flood, etc.

PARTING. A selvage. A thin layer separating greater masses of rock, usually beds, as a parting of shale between beds of sandstone or limestone. Also separating the silver from the gold in the button derived by cupellation. The silver is dissolved by nitric acid, the gold remaining as powder.

PASS-BY. A siding in which the tubs pass one another underground.

PATCH. A small placer claim outside the main gulch.

PATCHY. Distributed in patches or in an irregular manner, as when ore occurs in bunches or sporadically.

PATIO. A yard or court. The space where ore is mixed and amalgamated by the tread of horses.

PATIO PROCESS. The Mexican method of amalgamation of silver ores.

PAY ROCK. The lode material in which the mineral or pay is found.

PAY STREAK. The richest streak or part of a lode.

PEASY. Lead ore in grains about the size of peas.

PEAT. A mass of vegetable matter formed in bogs and marshes.

Its principal constituent is sphagnum moss, but rushes, reeds, sedges, grasses, algae, etc., may also contribute. Peat sometimes accumulates to considerable depth; the lower portion becomes black and dense and is used for fuel. The rotten wood found in the bottom of swamps is not peat properly speaking, but called "bog oak," bogwood.

- PEGMATITE.** A very coarse variety of granite, composed principally of quartz and crystalline felspar, but often holding sheets of mica. It usually forms great veins or enlargements of veins cutting mica schist, gneiss, etc. Formerly applied also to finer mixtures of quartz and felspar, called Binary granite, now known as granitite and quartz felspar rock.
- PENT HOUSE.** A shed or horizontal barricade across one end of a shaft, made of strong timbers loaded with rock to protect against any accidental falls from above; more properly the roof or shelter over a windlass or shaft.
- PERMIAN SYSTEM.** Named from the ancient kingdom of "Perm" in Russia, where these strata are undeveloped. The system next above the carboniferous, formerly called the new red sandstone; the Devonian or next system below the carboniferous, being the old red sandstone. This name (introduced in 1841 by Sir Roderick Murchison) is derived from the government of Perm in central Russia, where the system is well developed. There, as in the north of England, it is made up principally of red sandstone.
- PETRIFY.** To become stone. Organic substances, such as shells, bones, wood, etc., embedded in sediments, become converted into stone by the gradual replacement of their tissue, particle by particle with corresponding amounts of infiltrated mineral matter. Thus not only the outward form, but even the minutest detail of the organic tissues are preserved.
- PETROLEUM, OR ROCK OIL.** Liquid hydrocarbon; formed in large quantities in some rocks which contain organic matter.
- PETROLOGY.** See Lithology.
- PETROSILIX.** A compact silicious felsite having a fracture like Jasper, but distinguishable from it in being fusible before the blow pipe.
- PHENOMENON.** In science, any natural occurrence or appearance.
- PHOSPHATE OF LIME.** See Apatite.
- PIG IRON.** Produced by deriving from iron ores (and scrap iron) the metallic iron they contain. See Blast Furnace.
- PIKE.** A pick.
- PIKEMAN.** The man who holds or cuts the coal.
- PILLARS.** Portions of the vein or bed left standing to support the roof.
- PINCH.** The narrow space where the walls come close together, or also a contraction in the vein.

- PIPE.** (1) An elongated body of mineral. (2) The name given to the fossil trunks of trees found in coal veins. (3) To subject to the action of a strong stream of water from a hydraulic nozzle.
- PIT.** A shaft.
- PIT-EYE-PILLAR.** A solid mass of coal left round the bottom of shafts of coal mines.
- PITCH.** The dip of a lode.
- PITCHSTONE.** A dark, glassy or pitchy looking igneous rock, occurring as dikes, and also as beds which have flowed upon the former surface. It is a natural glass with splintery fractures, although translucent only on thin edges, and has the composition of felsite.
- PIT MAN.** The shaft man who attends to the shaft equipments, pumps, etc.
- PLACER.** An auriferous alluvial deposit.
- PLACING WORK.** Distribution of work among putters.
- PLAGIOCLASE.** The triclinic felspars are called collectively plagioclase. The principal felspars are: Albite, Anorthite, Labradorite, and Oligoclase. As constituents of rocks they occur generally in small crystalline grains, and without a microscopic examination it is difficult to distinguish them in this form from one another; hence this term is very convenient for use in the field.
- PLANE.** An inclined tramway for lowering cars by gravity, or raising them by means of a stationary engine.
- PLASTER OF PARIS.** A plaster made from Gypsum by grinding and calcining it; so called from its manufacture near Paris, in France. In Canada, this term has been adopted for Gypsum in any form.
- PLASTIC CLAY.** In England applied to certain clays of the Eocene system, but in general means clay suitable for moulding into any form; clays that can be easily moulded.
- PLAT.** A small chamber on the side or sole of a level, where it intersects a shaft, made to facilitate dumping. Where it is cut in the sole it is called a trip-plat. Also a swinging or revolving door used intermittently to connect two trackways.
- PLEISTOCENE SYSTEM, OR POST-PLEISTOCENE.** The system which succeeds the pliocene. It embraces the remains of a few extinct species of animals, especially of mammals, while those of the recent belong entirely to species still living.
- PLICATED.** Folded together, as in highly inclined and contorted strata.

- PLIOCENE SYSTEM.** The uppermost of the Tertiary systems; divided into the older pliocene, in which from 35 to 50 per cent. of its imbedded species are still living, and the newer pliocene in which the proportion is from 90 to 95 per cent.
- PLUMBAGO.** See Graphite.
- PLUMBAGINOUS.** Containing plumbago, as plumbaginous schist; some crystalline limestones are also plumbaginous.
- PLUMB.** Vertical.
- PLUMMET.** A string of fine copper wire attached to a heavy weight; used for determining the verticality of shaft timbering.
- PLUNGER.** The solid piston of a force pump.
- PLUTONIC ROCKS.** Igneous rocks which have cooled at a considerable depth from the surface and under great pressure.
- POCKET.** A single mass of ore, which may be of any size. When a vein carries ore in isolated masses with much dead ground between them, it is said to be pockety.
- POINT OF THE HORSE.** The point where a vein divides into branches.
- POLING.** The process of timbering by the use of poles for timbering in soft ground.
- POLE-PICK.** A combination pick and hammerhead or pole like poleaxe.
- POPNET.** Also puppet. A pulley frame or the head-gear over a shaft. A valve which lifts bodily from its seat instead of being hinged.
- PAPHYRA.** (Porphyra, purple). Any mass of rock with crystals distinct from the matrix. Typical porphyry are, however, those which have a felspathic ground mass or matrix with a compact or flinty texture, and holding disseminated crystals of felspar. Quartz porphyry contains a considerable proportion of quartz in addition to the felspar, and crystals of both minerals are scattered through it; but where no such crystals occur, and the whole mass is compact, it forms a variety of felsite. Porphyry was originally applied to a red syenite with distinct felspar crystals from upper Egypt, and all similar rocks are still included among the porphyries.
- PORPHYRITIC.** Resembling porphyry.
- PORPHYRITIC granite.** A base of granite containing prominent crystals of felspar.
- POLROZE.** The pit under a water-wheel; Pol Roz—Cornish for wheel pit.
- POST AND STALL.** See Pillar and Stall.

- POST TERTIARY PERIOD.** Also called quaternary. The newest of the five grand divisions of geological time. It includes the pleistocene and the recent or prehistoric systems which bring us up to the present or historic time.
- POT HOLES.** Kettles. Circular holes, sometimes much deeper than wide, worn into the solid rock at falls and strong rapids by sand, gravel and stones being spun round by the force of the current.
- POT STONE.** A coarse or impure variety of soap stone; so called from being easy to cut into pots, owing to its softness.
- POWER DRILL.** A rock drill employing steam, air or electricity as power.
- PRECIPITATE.** When a substance held in solution in a liquid is thrown down in a solid form by the addition of some other substance in solution, the resulting solid is called a precipitate. When a substance held only mechanically in suspension in a liquid settles to the bottom, it is called a sediment.
- PRIAN.** Ore composed of small pebbles in a clay matrix.
- PRILL.** A good-sized piece of pure ore.
- PRIMARY.** See Palaeozoic.
- PRIMITIVE.** See Archean.
- PRIMORDIAL.** The name given by Barrande to the oldest fossiliferous rocks as developed in Bohemia. It corresponds to the British Cambrian.
- PROP.** A piece of timber or metal placed normally to the roof or wall for its support.
- PROSPECT.** The name given to underground workings, the value of which has not yet been made manifest; the name given to an undeveloped mining property.
- PROSPECTING.** A search for deposits; applied both to the seeking of undiscovered veins and to the investigation of the value of known veins by exploration.
- PROSPECTOR.** A person engaged in exploring for valuable minerals or in testing supposed discoveries of the same.
- PROTOGENE.** A variety of granite in which talc takes the place of mica, so called by the French, who supposed that it was the first form of the granite. The granites of Cornwall, England, which decompose and yield Kaolin are of this kind.
- PSEUDOMORPH.** False form; the name given to crystalline forms of a composition not proper to such forms. They may be mere castes occupying cavities from which crystals have been removed.
- PUDDING-STONE.** Conglomerate, with round pebbles in it.

PUDDLE. To temper clay.

PUDDLE-CLAY. Puddle clay, the tempered clay made use of in puddling a shaft.

PUMICE. A very light, porous and vesicular lava, which will float on water; a sort of volcanic froth. Its color is generally whitish or light gray.

PUMP. Any mechanism for raising water out of a mine.

PUTTER. A young man who conveys coal from the workings to the horse-way.

PYRITES. (White). A sulphide of iron. (Yellow). A sulphide of copper. Also see Iron Pyrites.

PYROLUSITE. Black oxide of manganese; used for making oxygen for illuminating.

PYRO-SCHISTS. Bituminous shales which yield hydrocarbon, oils and gases on distillation.

PYROXENE. See Augite.

PYRRHOTITE. See Iron Pyrites.

PULSOMETER. A kind of a steam condensing pump, acting on the principles of a vacuum pump; more properly a pulsating steam pump.

Q.

QUARRY. Any open work in rock on a plan of excavating the entire mass, as distinguished from working a seam or vein by shafts or approaches under cover.

QUARTZ. A common mineral occurring in a great variety of forms. It is composed of the elements silicon and oxygen. It crystallizes in the hexagonal system. The transparent, colorless variety, which is the purest form, is called rock-crystal. White, or milk quartz is a very common vein stone. Gold occurs most frequently with quartz, but only a small proportion of quartz veins contain gold. The numerous varieties of quartz may be classified in three groups: (1) The vitreous, like rock-crystal, rose quartz, amethystine quartz, etc.; (2) the chalcedonic, like chalcedony, charnelion agate, flint, etc.; (3) the jaspary, like jasper, blood-stone, lydian stone, etc.

QUARTZITE. Quartz rock; a rock composed of grains of quartz cemented, or, as it were, fused together by the same substance. Quartzites are indurated sandstones; they often contain grains of felspar. Among the Huronian rocks, great depths of quartzites occur from Lake Huron north and north-eastward, and on the north-west side of Hudson Bay.

QUATERNARY. See Post-Tertiary.

QUEER. A small cavity or fissure.

QUICK. (Adjective). Soft running ground; an ore or pay streak is said to be quickening when the associated minerals indicate richer minerals ahead.

QUICKLIME. When carbonate of lime has been thoroughly calcined, this results. By the addition of water, it forms hydrate of lime, the process being called slacking.

QUICKSILVER. A common name for mercury; one of the metallic elements remarkable for its low melting point, being liquid down to 40 degrees F. below zero.

R.

RACE. An artificial canal for conveying water.

RACK. An inclined frame on which the ores are washed and separated from the slime

RAFTER TIMBERING. That in which the timbers appear like roof rafters.

RAISE. A shaft or winze which has been worked from below.

RAKE. A term applied to a vein when oblique or vertical.

RANDOM. The direction of a raking vein.

RANGE. A chain of mountains or hills; also a belt or strip of country within which certain economic minerals are supposed to occur or run.

RAW QUARTZ. Quartz that has undergone no treatment, such as burning or reduction, prior to being placed under stamphead.

RAPPER. A lever at the top of a shaft or inclined plane for signals from the bottom.

REACHER. A slim prop reaching from one wall to the other.

REAMER. An enlarging tool.

RECENT. The present geological time, although it extends back through a vast period of years. All or nearly all existing species of animals have lived through the recent epoch.

REDUCING. The separation of a metal from its compound.

REEF. In mining often applied to quartz veins, or veins of any kind; also to solid or fixed rock in general, as opposed to loose materials.

REFINING. Purifying the ores.

REGULATOR. A sliding door: to apportion the amount of air to be admitted into a section of a mine.

RESIN. Mineral resin. Substances allied in composition to the resins of coniferous trees, such as amber.

- RETICULATED.** A net-like arrangement.
- RIB.** A pillar of vein matter left to support roof or wall.
- RIBBONED.** When the stratification of rocks is very distinct or strongly marked on a small scale, as by contact of colors, such as may often be seen in gneisses, they are said to be ribboned. When the lines of contrast are on a larger scale, they are said to be banded.
- RICKET.** See Fang.
- RIDER.** An ore deposit overlying the principal vein or a portion of the country rock enclosed in a vein.
- RIDDLE.** A box or vessel with a perforated bottom, used by alluvial gold miners for separating out the coarse gravel.
- RIFFLES.** Cross-sections of timber set on the floor of a sluice, with irregular spaces between them in which the gold settles.
- RIPPLES.** Grooves or bars across sluices for washing gold.
- RIPPLE MARK.** The wavy surface of some beds of sandstone and mudstones, produced by gentle movement in shallow water when these rocks were in a soft condition.
- RISE.** See Raise.
- ROBBING.** To gut a mine; to work for the ore in sight without regard to supports, reserves or any future consideration. The taking of mineral from pillars.
- ROCHES MOUTONNEES.** Rounded hummocks or bosses of rock, like whales' backs, smooth and striated by glacial action.
- ROCK.** Commonly used to indicate any stony substance occurring in nature, but geologists are obliged to extend its meaning so as to include almost everything which enters into the composition of the earth, even if the material be soft, like marl, clay, or sand. Rocks generally consist of mixtures of different minerals, although some, such as limestone, serpentine, quartzites, etc., are composed almost entirely of one mineral species. See Mineral.
- ROCK BASIN.** A depression or basin-like excavation in the solid rock, sometimes of great extent. Nearly all of our numerous lakes, even the largest of them, are entirely surrounded by solid rock or lie in rock basins.
- ROCK CRYSTAL.** Transparent, colorless quartz.
- ROCKER.** See Cradle.
- ROCK FAULT.** A disturbed portion of a vein in which coal is replaced by sandstone.
- ROCK SALT.** Common salt occurring in nature in solid beds or rock masses.

- ROCK WATER. Water that percolates through rock.
- ROOF. The stratum overhead.
- ROOF WORK. Applied to a vein worked overhead.
- ROOM. A working place in a flat mine; corresponds to stope in a steep vein.
- ROTTEN STONE. A soft, light, earthy substance, consisting of silica in fine grains, resulting from a decomposition of silicious limestone.
- ROYALTY. A rate or duty payable to the government or to individuals on the produce of a mine.
- RUBBLE. Loose stones.
- RUBBLY REEF. A vein much broken up.
- RUN. A mode of contract work in which steep parts of coal seams are driven and paid for by the lineal foot or yard of progress.
- RUSTY. Oxidized. Ore coated with oxide. Applied to gold which will not easily amalgamate, and to decomposed pyrites covering a lode.
- RUTILE. A mineral consisting of oxide of titanium. It is found associated with titaniferous ores, and occasionally in mica-schist, granite, etc.

S.

- SADDLE. The ridge of a stratum or ore bed.
- SAFETY CAGE. One supplied with safety appliances.
- SAFETY LAMP. A lamp in which the flame is protected from immediate contact with the surrounding atmosphere.
- SALTING. Placing foreign ore in the crevices of a vein, or elsewhere, to fraudulently raise its apparent value.
- SAMSON-POST. An upright supporting the working beam which communicates oscillatory motion to pump or drill rods.
- SAND-PUMP. Pump for pumping sand and water.
- SANDSTONE. Rock composed of sand more or less consolidated or cemented together.
- SACCHAROIDAL. Having the texture of loaf sugar, as fine-grained crystalline limestone or marble.
- SCALE. A loosened fragment of rock threatening to break off and fall. (2) The incrustation deposited in boilers from evaporated waters.
- SCALE OF AIR. Air abstracted from the main current.
- SCALE OF HARDNESS. The relative hardness of minerals is one of their most convenient tests. There are ten degrees. See Hardness.

SCHIST. Crystalline, foliated rock, splitting into irregular lenticular or wedge-shaped, plated. There are many kinds of schists, such as chloritic, calcoid, dioritic, mica, hornblende, etc. See Slate and Cleavage.

SCHISTOSE. Resembling or having the nature of schist.

SCOVAL LODE. A tin lode.

SCRAPER. A tool for cleaning out drill holes.

SEAM. This word was once used to indicate the divisional plane or line between beds of rock; it now applies to the bed itself. It usually indicates a bed of a different kind from the others with which it is associated, as a seam of coal.

SECONDARY. See Mesozoic.

SECTION. In geology, either a natural or an artificial rock-cut, or the representation of such on paper.

SEDIMENT. Any matter, such as mud, sand, etc., which has settled down from suspension in water. Most stratified or sedimentary rocks have been found in this way, although some, as certain limestones and colomites, have been precipitated. See Precipitate.

SEED-BAG. A water-tight packing of flaxseed around the tube of drill hole, to prevent the influx into the hole of water from above.

SEGREGATION. A process by which mineral matter has been transfused or exuded into veins and openings, especially in crystalline rocks.

SEGREGATIONS. All those aggregations of ore having irregular form, but definite limits. They differ from beds and lodes by the irregularity of their form; from impregnations by their definite limits.

SELENITE. Gypsum in transparent crystals.

SELVAGE. A lining; a gouge; a thin band of clay often found in the vein upon the wall.

SEPTUM. A division or partition, such as those in an orthoceras.

SEQUENCE. Following, succession, coming after, continuation.

SERICITE. A tale-like hydrous mica. (Muscovite). Occurring in small scales, and forming sericitic schist, which is also called talcoid schist, and often spoken of by prospectors as talcose schist, but this term properly applies to schists composed largely of talc, which are much rarer.

SERIES. In geology, a group of rocks in a certain order or succession, or a set of beds having something in common.

SERPENTINE. A compact rock, rather soft or sectile, with a conchoidal and splintery fracture and waxy lustre. When powdered, has a greasy feel. Capable of a high polish, and is called marble. Translucent on thin edges. In color it has various shades of green, generally dark and leek-green; often spotted or veined; these are called vert-antique; also brown, red, yellowish, etc. Composed of hydrated silicate of magnesia and a little iron. The name has reference to its colors, suggestive of those of snakes.

SETT, OR SET. (1) A frame of timber; (2) a portion of ground taken by a tributer.

SHAFT. A deep pit or hole sunk through earth or rock for the purpose of reaching minerals. Shafts are generally rectangular in cross section, and perpendicular, or approximately so. If they underlie far from the perpendicular they are called slopes.

SHALE. Fissile argillaceous rock, splitting with the bedding as distinguished from slate, which cleaves in parallel lines independent of the bedding. Shales are generally softer than slates. There are many varieties, as ordinary argillaceous or clayey shale, bituminous (like the Utica) shale, arenaceous, ferruginous, calcareous, etc.

SHAKING TABLE. A slightly inclined table to which a lateral shaking motion is given by means of a small crank or an ex-centric. Water is allowed to flow over them and they are covered with copper plates coated with mercury for the purpose of amalgamating gold or silver. They may also be provided with ripples or ruffles and used in separating alluvial gold.

SHEAVE. A grooved wheel over which a rope is turned.

SHELF. The solid rock.

SHELL MARL. A light colored calcareous deposit in the bottoms of small lakes, composed largely of dead fresh water shells, but apparently also to some extent of precipitated carbonate of lime, and the hard parts of minute organisms, used for manure.

SHELL PUMP. See sludger.

SHELLY. Broken ground.

SHIFT. The time during which one set of men works in a mine. There are usually two shifts of ten hours each, in the 24 hours, but when great expedition is required, three shifts of eight hours each may be worked.

SHINGLE. Rounded stones and pebbles, larger than gravel and smaller than boulders, forming ancient or modern benches.

SHODE, OR SHOAD. A fragment of ore washed down naturally from its bed.

- SHODING.** The tracking of boulders towards the vein or rock from which they have come.
- SHOE.** With which the stamps in gold mills are shod.
- SHOOT.** See Chute. Also the richest ore streaks in a vein which, in the profile of the vein, may run at any angle to the horizon.
- SICKENING OF QUICKSILVER.** See Flouring.
- SILICA.** Silica. The same in composition as quartz; used more frequently in chemical language for this substance.
- SILICIOUS.** Relating to silica.
- SILICIFIED.** Made into silica. Organic remains, both plant and animal, are often thus converted.
- SILL.** The floor piece of a timber sett, or that on which the track rests. Also a windlass frame.
- SILT.** Mud, fine sand, etc., deposited in harbors, estuaries, lagoons, etc., from the slacking of the currents which have borne them along.
- SILURIAN SYSTEM.** The second system in ascending order of the palaeozoic period.
- SILVER.** A metallic element; the whitest of the metals; specific gravity 10.53; fusing point 1,873 degrees. Symbol Ag. Atomic weight 108.
- SILVER GLANCE.** Sulphide of silver.
- SINK HOLES.** A lump or sink at the bottom of a shaft.
- SINUOUS.** Curving, winding.
- SKID.** A wooden beam, scantling or other timber, used for sliding heavy weights upon.
- SKIMPINGS.** The skimmings of waste off the body of ore lying in a vat.
- SKIP.** A hoisting bucket.
- SLAB.** A wide flat stone; the outside cut off a log of wood in sawing it into planks.
- SLACK.** Small dirt or coal.
- SLAG.** Metallic dross or recrement.
- SLATE.** Bony coal and hard clay.
- SLEEPING PARTNER.** A shareholder in a claim who does not work in it.
- SLIDE.** One kind of fault,—the vertical dislocation of a lode. Also the mass or loose rock overlying either lode or country. See Fault, or Dislocation.
- SLIMES.** Mud containing ores.
- SLIP.** A dislocation, as to a vein.
- SLITTER.** See Pick.

SLOPE. An incline. It is an inside slope when it does not extend to the surface.

SLUDGE. Mud flowing from a puddling machine.

SLUDGER. A cylinder having an upward opening valve at the bottom, which is lowered into a bore hole to pump out the sludge or fine rock resulting from drilling.

SLUICE. A series of boxes set in lime and floored with ruffle blocks.

SLUICE-BOX. A long trough or flume with ripples, for catching alluvial gold when the earth is washed down it by water.

SMELTING. The reduction of metals from their ores in furnaces. It is a form of the word smelt. In smelting, the ore is melted. In other processes it is roasted.

SMIFT. A slow-burning fuse.

SOLE. The floor of a horizontal working.

SOLLAR. The plank flooring of a gallery covering a gutterway beneath. Also the platform in a shaft between two ladders.

SOUGH. A drain. (English).

SPANGLE-GOLD. Gold in the form of smooth, flat scales.

SPAR. Crystalline vein-stones which break along cleavage planes as calcspar, fluorspar, felspar, bitterspar, heavyspar, etc.

SPECIFIC GRAVITY, in regard to solids, means their weight relatively to an equal bulk of water at a temperature of 60 degrees F.

SPECIMEN. Properly speaking a sample of anything; but, among miners, it is often restricted to selected or handsome minerals, as fine pieces of ore, crystals, or pieces of quartz containing visible gold.

SPECULAR. Mirror-like, as specular iron ore, a variety of hematite.

SPEARS. Pump-rods.

SPILLING. Timbering used in quicksand or loose ground, where lathes are driven behind timbers and kept flush with the heading.

SPILLS. Thin bars of iron or wood.

SPOON. A slender iron rod with a cup-shaped projection at right angles to the rod, used for scraping drillings out of a bore hole.

SPRAG. A billet of wood used to block the wheels of a car and check its speed. Sprags are permanently used on self-acting inclines. A very steep line requires a sprag in each of the four wheels, while on a moderate pitch only one may be necessary to block a hind wheel. Also a short prop.

SPUR. An offshoot or branch vein; a subordinate range of hills or mountains connected with the main chain.

SQUARE SETT. A variety of timbering for large excavations.

SQUEEZE. The closing of a room by the setting of the roof or the rising of the floor. The thinning away of a seam.

SQUIB. A slow fuse for igniting an explosive.

STALACTITES. Tapering or icicle-shaped projections of travertine hanging from the roofs of caves or fissures, formed by the dripping of lime water.

STALAGMITES. Of the same composition and form as stalactites, but have grown upwards from floors of caves, etc., on which lime water has dripped.

STAMPS. Machine for crushing ores by vertical stroke.

STAMPER-BOX. See Mortar-box.

STAMP-HEAD. A heavy and nearly cylindrical cast iron head fixed on the lower end of the stamp-rod, shank or lifter, to give weight in stamping the ore. The lower surface of the stamp-head is generally protected by a cheese-shaped "shoe" of harder iron or steel which may be removed when worn out. These shoes work upon dies of the same form laid in the bottom of the mortar or stamper-box.

STAMP-MILL. A mill for stamping ores; used for reducing those of gold, silver, tin, copper, etc.

STANNIFEROUS. Carrying tin.

STATION. An excavation adjoining a shaft for receiving the pump or V balance-bob, or for landing the hoisting conveyances.

STEFATITE, OR SOAPSTONE. A massive variety of talc; a very soft rock, having a soapy or greasy feel; it is a silicate of magnesia with a little water.

STOCKWORK, or STOCKWERKE. A thick mass of reticulating metalliferous veins, the country rock between them being also charged with pockets and impregnations of ore. Stockworks have seldom any great length in proportion to their width. They may be described as indefinite aggregations or accumulations of ore of a general lenticular form, but apt to recur, especially in depth, as if connected with some line of fracture.

STONE AGE. The period when men used implements of stone instead of metal.

STONE OF ORE. A piece of ore.

STOPE. A step. The excavation of a vein in a series of steps.

STOPING. When a mine has been opened by sinking shafts and driving levels (called simply "sinking and driving"), the next process is to stope out the ore, which consists in excavating it either upwards from the roof of each level, called overhand stop-

ing; or downward from the floor, called underhand stoping. The latter requires all the material to be removed out of the mine, whereas by the overhand process, the refuse may be left supported on stulls or flooring made of timber.

STOW. To pack a drive with stow or mullock, so as to give support to the roof.

STOWING. The debris of a vein thrown back of a miner to support the roof or hanging wall of an excavation.

STRATIFICATION. Relating to the arrangement in strata or layers.

STRATIGRAPHY. The description of stratigraphical arrangement or its delineation on a map.

STRATUM. A bed or layer of rock; strata, more than one layer.

STREAK. The color of a mineral when scratched. When a mineral is rubbed on the surface of unglazed porcelain, the streak is well brought out.

STRIAE. Fine parallel lines, either grooves or ridges.

STRIKE. The course or bearing of the outcropping edges of inclined strata, in reference to the horizon, or in other words, the strike is the intersection of the plane of the bedding with the horizontal plane; it is therefore at right angles to the dip.

STRING. A very small vein, either independent or occurring as a dropper of a larger vein.

STRING-RODS. A line of surface rods connected rigidly for the transmission of power; used for operating small pumps in adjoining shafts for a central station.

STRIPPING. Removing the earth or rubbish from the outcrop of a vein or from any rock surface.

STRUCTURE. The arrangement of rock masses, such as their being bedded, jointed, slaty, schistose, basaltic, columnar, etc.; also the attitude of rocks and their positions relatively to each other.

STULL. The platform or flooring of timber fixed between the walls of a mine in overhand stoping, for receiving the refuse rock.

STULL DIRT, or STULL ROCK. Material supported upon the stulls.

STUMP. A pillar between the gangway and its parallel airway.

SUBLIMATION THEORY. That which refers the filling of fissures to material deposited from ascending steam, or by condensation from a gaseous condition.

SUBSIDENCE. A sinking down of a part of the earth's crust.

SULPHIDE. The chemical union of sulphur with a metal.

SULPHURET. A sulphide. Sulphide is the more recent and approved term.

SUMP. A deepening at the bottom of a shaft to receive the drainage of a mine, and from which the water is pumped.

SUPERFICIAL DEPOSITS. Deposits forming the surface mostly of a soft or incoherent character. In Canada they include the Pleistocene, or Post-Pleistocene and recent deposits.

SUPERPOSITION. The order in which rocks are placed above one another.

SURFACE GEOLOGY. The geology of the superficial deposits and of the surface of the fundamental rocks.

SWAB-STICK. A stick frayed out at one end; used for cleaning the sludge out of holes in process of being bored for blasting.

SWALLOW HOLES. Natural holes on the surface, caused by subsidence of rocks; also caverns or openings where the water disappears.

SWAMP. A trough-shaped basin in a coal mine.

SYENITE. Originally applied to a reddish crystalline granitoid rock, from Syene in Egypt, consisting of felspar, hornblende and quartz; now called quartz-syenite, while syenite has come to mean a crystalline granitoid rock, consisting of felspar and hornblende without quartz.

SYNCLINAL. When stratified rock dip from opposite sides toward a common line, the arrangement is called a synclinal; the reverse of anti-clinal.

SYNDICATE. An association or council of persons; in use to designate any combination formed to carry out a great financial enterprise.

SYSTEM. A great series of strata, having some general character in common. As a division of the rocks of the earth's crust, the system ranks next above the formation in comprehensiveness. Formations are somewhat local divisions, and many of them can only be recognized in one country, whereas the systems are sufficiently comprehensive to be recognized in all parts of the world. The systems in ascending order are: Laurentian, Huronian, Cambrian, Silurian, Devonian, Carboniferous, Permian, Triassic, Jurassic, Cretaceous, Eocene, Miocene, Pliocene, Pleistocene and Recent.

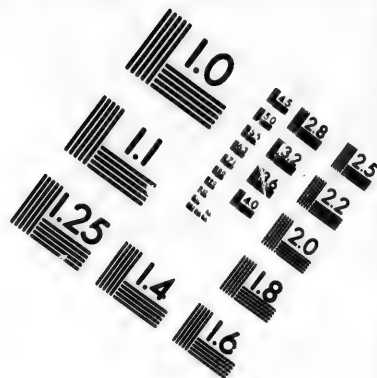
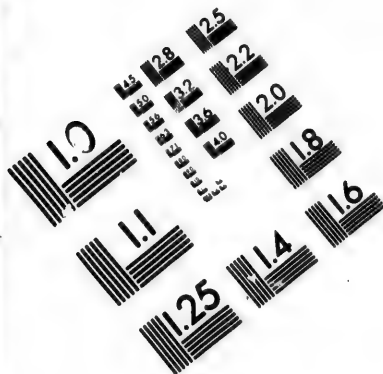
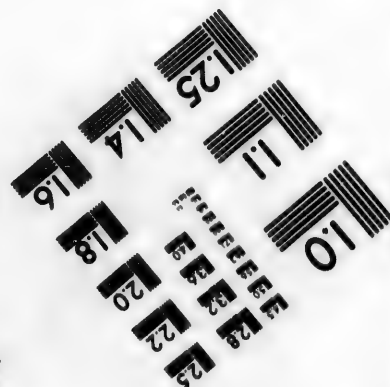
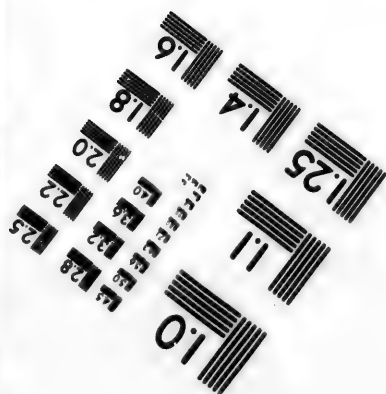
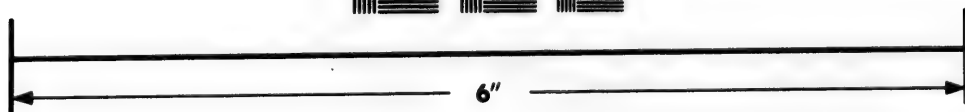
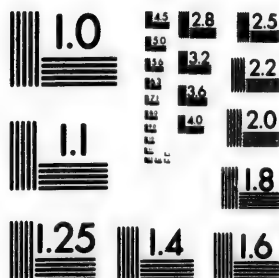


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T.

TACK. Applied to vein-stone much mixed with Mullock.

TACKLE. The windlass, rope and bucket.

TAILINGS. The fine waste material from jiggers and crushing mills, that from the latter is carried out by water and is as fine as sand.

TAIL RACE. The channel for carrying off the spent water of a mill, or from a washing process.

TAIL ROPE. The secondary rope used for balance, which is attached underneath the cages of a hoisting plant, or at the tail-end of the loaded and empty trains of cars on a slope for raising the empty cars or skips.

TAILINGS MACHINE. A machine for dressing the tailings.

TALC. A very soft mineral, being 11 in the scale of hardness; occurs in laminae like mica, but is not elastic; has a pearly lustre and greasy feel; prevailing color, greenish; is a silicate of magnesia; enters into the composition of talcose, schist, soapstone or steatite, the variety of granite known as protogene, etc.; is used in the manufacture of crayons, crucibles and porcelain.

TALCOID. Resembling talc, as talcoid schist. See Sericite.

TALCOSE. Containing talc; as potstone, stetite and talcose schist.

TALCOSE GRANITE. See Proterogene.

TALUS. In geology, the sloping mass of fallen rocks, accumulated at the base of a cliff or precipice.

TAMPING. The crushed rock or other material which is hammered tightly down over the explosive in a drill hole for blasting. Also the process of making a bore hole gas-tight by the use of clay.

TAMPING BAR. An iron bar shod with copper to obviate striking fire, used for driving down the tamping.

TAPPET. The projection on the stamp shaft lifted by the cam.

TAR. Soft pitch or thickened petroleum, found in cavities of some limestones, as those of the corniferous formation in Ontario; also in those of the township of Keppel, west of Owen Sound. Along some parts of the Athabasca River in the North-West Territory, much mineral tar has exuded from the rocks.

TEMPERING. The act of reheating and properly cooling a bar of metal to any desired degree of elasticity.

TERRA COTTA. The "baked earth" of the Italians. Kiln-burnt clay, assuming a peculiar reddish-brown color, fashioned into vases, statuettes, and other mouldings.

TERRA SIENNA. See Ochre.

TERRAIN. A group of strata, a zone or a series of rocks. This word is used in the description of rocks in a general provisional, or non-committal sense.

TERRACE. A nearly level shelf of land abutting on higher ground and dropping off suddenly on the lower side. This steep bank is due to the former wearing action of some body of water which cut it away.

TERTIARY PERIOD, OR AGE. Also called the Cainozoic period. The third grand division of geological time above the Azoic, or the fourth in all. It comprises (in ascending order) the Eocene, Miocene and Pleiocene systems.

TESSELLATED. A surface divided into squares or figures approaching squares, by joints or natural divisions.

TEXTURE. The coarseness or fineness, character, arrangement etc., of the component grains or particles of a rock.

THREAD. An extremely small vein, even thinner than a string.

THROUGHS, or THIRLING. A passage cut through a pillar to connect two rooms.

THROW. The amount of dislocation of a vein.

TILL. The Scotch name for hardpan, boulder clay or the unstratified stony clays of the drift formation; a convenient term now generally adopted by geologists for these deposits.

TIPPLE. The place where cars have their contents dumped.

TITANIFEROUS. Carrying titanium, as titaniferous iron ore. See Ilmenite.

TITANITE, or SPHENE. A mineral consisting of silicate of titanium and lime, generally darkly colored, occurring among the upper Laurentian rocks.

TITANIUM. A widely distributed dark grey metallic element, found in small quantities in many minerals.

TOR. A rounded mass of rock left by the decay of surrounding parts in elevated situations.

TOSSING. The process of finally towing or rinsing by agitation in water.

TOURMALINE. A mineral occurring in long, usually striated prisms, in the ancient crystalline rocks; generally dark in color, harder than quartz, and complex in composition, but consisting principally of silicate and borate of alumina, with some iron, magnesia, lime, fluorine, and different alkalies.

TRACHYTE. A volcanic rock or lava, common in Tertiary and Post-Tertiary times; consisting principally of a glassy variety of orthoclase, called Sanidine, and some triclinic felspar, together with hornblende, mica, magnetite, etc. It is characterized by its rough fracture.

TRAM. The car of a tramway or light railway.

TRAMMER. One who pushes cars along the track.

TRANSITION. Intermediate. A term used by the older geologists for rocks which came between their better defined divisions; but little used at present.

TRANSLUCENT. Admitting the passage of light, as milk-quartz, but not capable of being seen through.

TRANSPARENT. That may be seen through, as rock crystal, Iceland spar, selenite, etc.

TRAP. A general term for igneous rocks, such as the greenstones, basalts, amygdaloids, most porphyry, etc., but too indefinite for modern geological language.

TREMOLITE. A variety of hornblende in radiating or columnar aggregates, generally light colored with pearly lustre.

TREND. The course of a vein.

TRIASSIC SYSTEM. The first or lowest system of the mesozoic or secondary period.

TRIBUTE. A system of contract mining by which the miner receives his pay out of the gross value of the ore sold, less a certain deduction for royalty to the mine owner.

TRIBUTERS. Miners paid by results.

TROLLY. A small carriage truck having no body.

TRILOBITES. A family of crustaceans, so named from their bodies as viewed from above, being divided longitudinally into three lobes. They embrace many genera and species; are most abundant in the Cambrian and Silurian systems, dying out in the Carboniferous; so that the rocks in which the remains of these creatures are found may be pronounced to be below the coal-bearing strata.

TROUBLE. See Fault.

TROUGH. In geology, synonymous with basin and synclinal, which see.

TRUCK. A small tramcar for carrying coal, rock or ore along a level in a mine or out to a shoot or dump. Also goods paid instead of money for wages.

TUBBING. An iron or wooden cylindrical lining of shafts.

TUBING. The tube lining of bore holes.

TUFA. Any open, porous, or vesicular masses, as volcanic tufa, calcareous tufa, etc.

TUFT. A soft sandstone; also calcareous deposits.

TUNNEL. A level driven from the side of a hill, etc., into a mine, or driven within the mine; equivalent to adit, level gallery, etc.

TUNNEL CLAIM. A claim worked by means of a tunnel.

TRUNCATED. Cut or broken off abruptly.

TURTLE STONES. Large nodular concretions found in certain clays and marls. In form they have a rough resemblance to turtles, and this appearance is increased by their being divided into angular compartments by cracks filled with spar, reminding one of the plates on the shell of a turtle. They are common in the cretaceous marls of the North-West Territories.

TUTWORK. Dead work, workers in barren ground; work paid for in the lump, as distinguished from tribute work.

TUYERE. The aperture for admitting air into a furnace.

TYMP. A short piece of timber placed horizontally for supporting the roof.

U.

UNCONFORMABLE. See Conformable.

UNCTUOUS. A greasy feel, such as that of soapstone, powdered serpentine, certain clays, etc.

UNDERHAND WORK. Picking or drilling downwards.

UNDERHOLDING. See Holding and Curving.

UNDERLAY. Applied to an inclined vein.

UNDERLIE. The inclination of a vein from the perpendicular; whereas dip is the inclination of a bed from the horizon.

UNIVALVE. A mollusc having a single shell. A bivalve mollusc has two shells.

UNSTRATIFIED. Rocks which are not in beds or strata, as granite, syenite, greenstone, etc.

UPCAST. A ventilating shaft where the air ascends.

UPHEAVAL. A lifting up as if by some force from below, of stratified or other rocks.

UPRAISE. An auxiliary shaft; a mill hole carrying from one level up toward another.

UPTHROW. An upward displacement of rock along a line of break or fissure.

V.

VEIN. An occurrence of ore usually disseminated through a gangue or vein-stone, and having a more or less regular development in length, width and depth.

VEIN-STONE. The mineral matter filling a vein, exclusive of the ore. See Gangue.

VEINED. Marked or streaked with veins or lines of color in various directions, as of some marbles.

VENA. The branches of the Veta, or main vein. (Spanish).

VENA or VETA MADRE. A mother vein.

VERD-ANTIQUE MARBLE. A variety of green serpentine with patches and veins of white calcespar, and capable of a fine polish. Abundant in eastern townships, Province of Quebec.

VERMILION. A bright red pigment, consisting of the sulphide of mercury. See Cinnabar.

VERTEBRA. A joint of the backbone of any vertebrate animal.

VERTEBRATA. One of the provinces or primary divisions of the animal kingdom.

VESICULAR. Containing little bladder-like cavities, such as some lavas.

VETA. A vein.

VITREOUS. Like glass.

VITRIFY. To make like glass.

VOLCANIC. Pertaining to volcanoes. Volcanic rocks are those of igneous origin, formed at or near the surface, such as lava, amygdaloid and volcanic ash; whereas igneous rocks formed at a depth and under pressure are generally crystalline, and are called plutonic. See Igneous.

VOLT. The unit of electromotive force.

VOLTAGE. Electromotive force reckoned in volts.

VOUGH. A cavity in the rock.

W.

WAGON-BREAST. One from which ore or coal can be carried by wagon.

WALL. The plane of a country where it touches the side of a vein when used in reference to lodes. The side of a level or drift, when used with reference to workings.

WALLS OF A VEIN. See Foot Wall, also Hanging Wall.

- WASH DIRT.** Gold-bearing earth worth washing.
- WASTE.** The debris of an excavation. See Gob and Goaf.
- WATERSHED.** The height of land or divide from which the natural drainage of a district flows in opposite directions.
- WEATHERING.** The change which the surface of a rock undergoes by exposure to weather.
- WEDGING.** The material, moss or wood, used to render the shaft lining tight.
- WHEEL.** A pit or hole in the ground. A mine. The names of most mines in Cornwall are preceded by the word Wheel. Old form, Huel. (Cornish).
- WHIM.** A winding drum with a vertical axis turned by a horse attached to a beam and walking round in a circle.
- WHIN.** Whin-stone or whin-rock. The Scotch name for Hornstone. In Nova Scotia the miners apply this term to a thick bed of rock composed of grains of quartz with argillaceous or felspathic matter which might be called a greywacke.
- WHIP.** A beam over a shaft, with a pulley and rope for raising or lowering a bucket or kibble. This is done by means of a horse going forward and back again.
- WHITE-DAMP.** The noxious gas called carbonic oxide gas.
- WINCH or WINDLASS.** A hoisting machine, consisting of a horizontal drum operated by crank-arm and manual labor.
- WINNING.** Gaining or mining the ore.
- WINZE.** Winds or Wize. A small shaft sunk from one level to another underground.
- WIRE-DRAWING.** The operation, accidental or otherwise, of reducing the pressure of steam between the boiler and the cylinder.
- WORKING-BARREL.** The cylinder in which the pump-piston operates.
- WORKINGS.** Any underground development from which ore is being extracted.

Z.

- ZEOLITES.** A numerous family group of minerals found chiefly in volcanic rocks. In composition they are allied to the feldspars, but contain water in addition.
- ZINC.** A metallic element; bluish-white; fusing point. 773 degrees F. Generally found as a sulphide (blende), or as a carbonate (calamine). Atomic weight, 65.2; specific gravity, 8.9.

ZINCBLENDE. Natural sulphide of zinc. A crystalline mineral with a bright resinous lustre; generally of resinous or dark color; gives a white streak. See Blende.

ZIRCON. A hard and heavy mineral found in granitic rocks. It consists of silicate of the metal zirconium. The commoner varieties are generally of a reddish-brown color. When transparent it is prized as a gem, and called "Hyacinth."

ZIRCONIUM. An earthy metallic element that is prepared as a black amorphous powder, as steel-grey shining scales, resembling graphite, or as crystalline laminae, resembling antimony. Zirconium has of itself no practical application, but its salts find limited use and are chiefly derived from Zircon.

ZONE. See Belt.

ZOOLITES. Certain hydrous silicates of alumina (with alkali, etc.), they swell up and boil when exposed to the heat of a blow-pipe flame.

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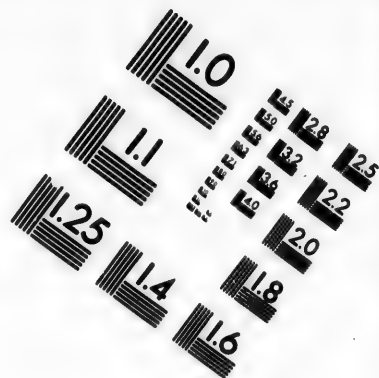
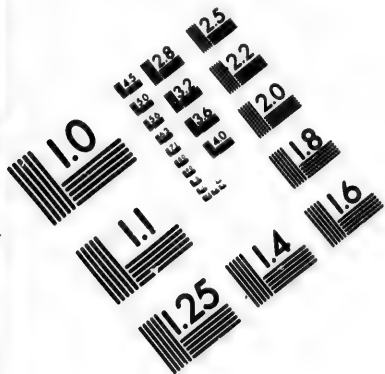
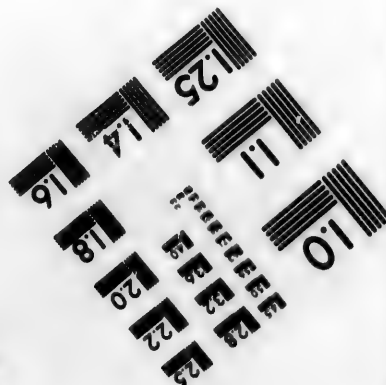
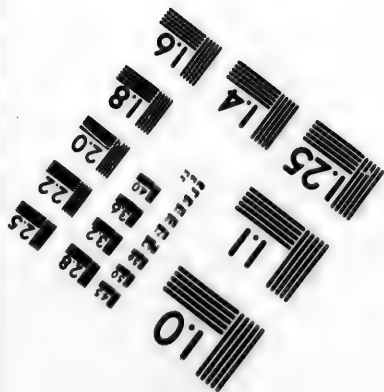
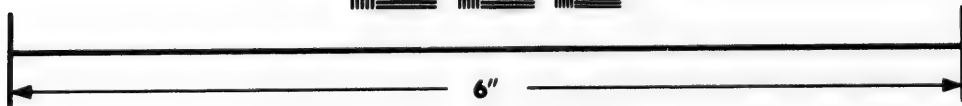
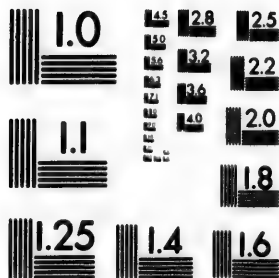


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A personal right of action dies with the person.

Actus legis nemini est damnosus, 549.

An act of the law prejudices no one.

Aliud est celare, aliud est tacere, 93.

It is one thing to conceal, another thing to be silent.

Assignatus utitur jure auctoris, 358.

An assignee is clothed with the rights of his assignor.

Caveat emptor, 88, 94.

Let a purchaser beware.

Cujus est solum, ejus est usque ad coelum et ad inferos, 135.

He who owns land owns also that which is above and below it.

Cujus est solum, ejus est usque ad coelum et deinde usque ad inferos, 317.

He who possesses land possesses also that which is above it, to the sky, and thence to the centre of the earth.

Damnum absque injuria, 229.

Damage not amounting to injury.

Debile fundamentum fallit opus, 539.

A weak foundation destroys the superstructure.

De minimis non curat lex, 532.

The law does not concern itself about trifles.

Discretio est discernere per legem quid sit justum, 554.

Discretion is to discover through the law what is just.

Ejusdem generis, 169.

Of its own kind.

Expressum facit cessare tacitum, 118.

What is expressed makes what is implied to cease.

Falsa demonstratio non nocet, 160.

Mere false description does not vitiate (a document).

Fraus est celare fraudem, 259.

It is a fraud to conceal fraud.

Id certum est quod certum reddi potest, 119.

That is certain which can be made certain.

Incerta pro nullis habentur, 205.

Things uncertain are considered as non-existent.

Modus et conventio vincunt legem, 204.

The form (of contract) and the agreement (of parties) overrule the law.

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Nec vi, nec clam, nec precario, 206.

Neither by force, nor clandestinely, nor precariously (as of right).

Nullum tempus occurrit regi, 269.

No time runs against the King (Crown).

Nullus commodum capere potest de injuria sua propria, 259.

No one can take advantage of his own wrong.

Optima est lex quae minimum relinquit arbitrio judicis, 535.

That system of law is best which confides as little as possible to the discretion of the Judge.

Quando aliquid conceditur, conceditur etiam et id sine quo res ipsa non esse potuit, 161.

Whenever anything is granted, that also is granted without which the thing itself would be unavailable.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud, 567.

When anything is directed, everything by which it can be accomplished is also directed.

Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud, 540.

Whenever anything is prohibited, everything calculated to accomplish it is also prohibited.

Quicquid plantatur solo, solo cedit, 133.

Whatever is affixed to the soil belongs thereto.

Qui jure suo utitur neminem laedit, 136.

Whoever enjoys his own right does not injure another.

Quilibet potest renunciare juri pro se introducto, 202.

Any one may renounce a right introduced entirely in his own favor.

Quid haeret littera haeret in cortice, 532.

He who adheres to the letter, adheres to the bark, (or, he who considers merely the letter of a statute goes but skin-deep into its meaning).

Qui sentit commodum sentire debet et onus, 532.

He who enjoys the advantage, ought also to bear the burthen.

Quod fieri non debet factum valet, 539.

What ought not to be done, yet having been done may be valid.

Sic enim debere quem meliorem agrum suum facere, ne vicini detriorem faciat, 221.

One ought so to work his own land as not to do an injury to his neighbor.

Sic utere tuo ut alienum non laedas, v., 142, 203.

So enjoy (use) your own property as not to injure that of another.

MAXIMS—Continued.

Sic utere tuo ut aliena jura non infringas. v.

So enjoy your own property as not to infringe the rights of another.

Ut res magis valeat quam pereat, 69.

So that the thing may be effectuated rather than made void.

Verba chartarum fortius accipiuntur contra proferentem, 69, 110.

The words of a document shall be taken most strongly against the party using them.

Vigilantibus non dormientibus jura subveniunt, 93.

The laws assist those who are vigilant, not those who sleep (over their rights).

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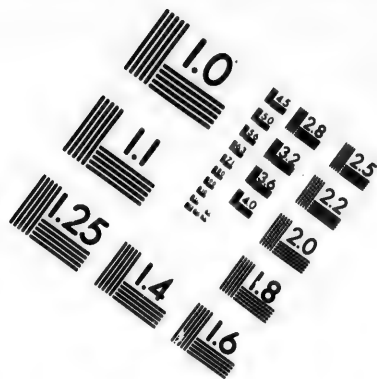
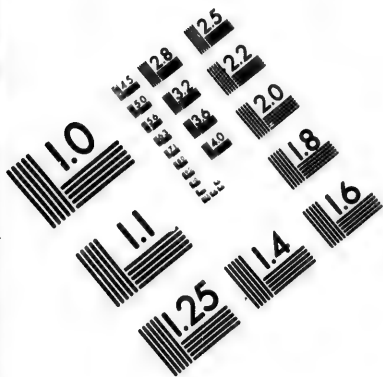
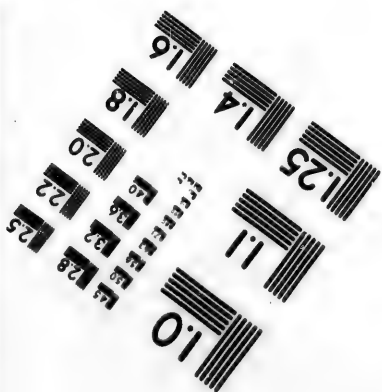
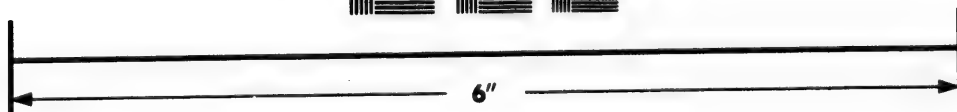
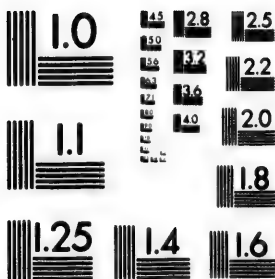


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